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Montana Community Development Block Grant Program

1983 Requirements Notebook
Volume I

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FOREWORD

The 1983 CDBG Requirements Notebook contains federal requirements referenced in the 1983 CDBG Grant Administration Manual. In addition, several State requirements may be included.

Local CDBG grant managers are likely to frequently refer to some of the requirements throughout the term of the project: OMB Circular A-102 -- Uniform Requirements, is one example. Other requirements are likely to be referred to on a more occasional basis or during one part of the project. Some of them will not be utilized unless the grant involves certain activities; for example, acquiring property or relocating households or businesses displaced as a result of the project.

If you encounter a federal or State requirement which is not contained in this Requirements Notebook, please contact the CDBG staff at 444-2488.

MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
1983 REQUIREMENTS NOTEBOOK

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Revised March 1984

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Section I

General Requirements

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OMB Control Number

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB). Applicable OMB approval numbers are included in the text of the regulation.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low- and moderate-income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department amends 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The Table of Contents to Subparts A, B, C, D, K, M and O of 24 CFR Part 570 is amended to read as follows:

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* * * * *

2. Subpart A of Part 570 is revised to read as follows:

Subpart A—General Provisions

§ 570.1. Purpose.

(a) This Part describes policies and procedures applicable to the following programs authorized under Title I of the Housing and Community Development Act of 1974, as amended:

(1) Entitlement grants program (Subpart D);

(2) Small Cities program: HUD-administered CDBG nonentitlement funds (Subpart F);

(3) State's program: State-administered CDBG nonentitlement funds (Subpart I);

(4) Secretary's Fund program (Subpart E);

(5) Urban Development Action Grant program (Subpart G); and

(6) Loan Guarantees (Subpart M).

(b) Subparts A, C, J, K and O apply to all of the above programs administered by HUD but do not apply to the State's Program (Subpart I) except to the extent expressly referred to (as, for example, in § 570.4). (Until Subparts J, K and O are amended to more completely reflect the Housing and Community Development Amendments of 1981, they should be read as applying to the Entitlement grants program in a manner which recognizes the deletion of the application requirements for grants made in Federal Fiscal Year 1982 and thereafter.)

§ 570.2 Primary objective.

The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.

§ 570.3 Definitions.

(a) "Act" means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*).

(b) "Age of housing" means the number of existing year-round housing units constructed in 1939 or earlier, based on data compiled by the United States Bureau of the Census referable to the same point or period of time, available from the latest decennial census except that the 1980 census data will not be used until Fiscal Year 1984.

(c) "Applicant" means a State, unit of general local government, or Indian tribe which makes application pursuant to the provisions of Subparts E, F, G or M.

(d) "Chief Executive Officer" of a State or unit of local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of local government are: the elected mayor of a municipality; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated pursuant to law by the governing body of the unit of general local government;

(e) "City" means, for purposes of Entitlement grant and Urban Development Action Grant eligibility: (1) Any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (2) any other unit of general local government which is a town or township and which, in the determination of the Secretary: (i) Possesses powers and performs functions comparable to those associated with municipalities; (ii) is closely settled (except that the Secretary may reduce or waive this requirement on a case by case basis for the purposes of the Action Grant program); and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census, which have not entered into cooperation agreements with such town or township for a period covering at least 3 years to undertake or to assist in the undertaking of essential community development

and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government. For purposes of urban development action grant eligibility only, "city" includes Guam, the Virgin Islands, and Indian tribes which are eligible recipients under the State and Local Government Fiscal Assistance Act of 1972 and located on reservations or in Alaskan Native Villages.

(f) "Discretionary grant" means a grant made from the Secretary's Fund in accordance with Subpart E.

(g) "Entitlement amount" means the amount of funds which a metropolitan city or urban county is entitled to receive under the Entitlement grant program, as determined by formula set forth in section 106 of the Act.

(h) "Extent of growth lag" means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of such metropolitan city or urban county, if such metropolitan city or urban county had a population growth rate, between 1960 and the date of the most recent population count available from the United States Bureau of the Census referable to the same point or period in time, equal to the population growth rate for such period of all metropolitan cities.

(i) "Extent of housing overcrowding" means the number of housing units with 1.01 or more persons per room as based on data compiled and published by the United States Bureau of the Census available from the lastest census referable to the same point or period in time, except that 1980 census data will not be used until Fiscal Year 1984.

(j) "Extent of poverty" means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time and the latest reports from the Office of Management and Budget. For purposes of this Part, the Secretary has determined that it is neither feasible nor appropriate to make adjustments at this time in the computations of "extent of poverty" for regional or area variations in income and cost of living.

(k) "HUD" means the Department of Housing and Urban Development.

(l) "Identifiable segment of the total group of lower income persons in the community" means female-headed households, and members of a minority group which includes Black, American Indian/Alaskan Native, Hispanic, Asian/Pacific Islander, and other groups normally identified by race, color, or national origin.

(m) "Indian tribe" means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaska Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512).

(n) "Low and moderate income household" or "lower income household" means a household whose income does not exceed 80 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(o) "Low and moderate income person" or "lower income person" means a member of a family having a family income within the limits determined in accordance with § 570.3(n) or any unrelated individual whose income does not exceed the one-person limit determined in accordance with § 570.3(n).

(p) "Metropolitan area" means a metropolitan statistical area, as established by the Office of Management and Budget. An area which was classified as a metropolitan area under criteria in effect as of December 31, 1979 shall continue to be so classified through Fiscal Year 1983 if it continues to meet such criteria.

(q) "Metropolitan city" means: (1) A city, within a metropolitan area, which is a central city of such area, as defined and used by the Office of Management and Budget (any such city which was classified as a central city as of December 31, 1979, shall continue to be so classified through Fiscal Year 1983), or (2) any other city, within a metropolitan area, which has a population of fifty thousand. Any city which has been classified as a metropolitan city because it has a population of at least fifty thousand will continue to be so classified through Fiscal Year 1983.

(r) "Nonentitlement amount" means the amount of funds which is allocated for use in a State's nonentitlement area as determined by formula set forth in section 106 of the Act.

(s) "Nonentitlement area" means an area which is not a metropolitan city or not included as part of an urban county.

(t) "Population" means the total resident population based on data compiled and published by the United States Bureau of the Census available from the latest census, or which has been upgraded by the Bureau to reflect the changes resulting from the Boundary and Annexation Survey, new incorporations, and consolidations of governments pursuant to § 570.4, and which reflects, where applicable, changes resulting from the Bureau's latest population determination through its estimating technique using natural changes (birth and death) and net migration, and is referable to the same point or period in time.

(u) "Secretary" means the Secretary of Housing and Urban Development.

(v) "State" means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(w) "Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands. Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), a community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or Title IV of the Housing and Urban Development Act of 1968.

(x) "Urban county" means any county within a metropolitan area which has qualified for a three-year period, pursuant to § 570.307, and which, at the time of qualification, is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government, and: (1) Has a combined population of two hundred thousand or more (excluding the population of metropolitan cities and Indian tribes therein) in such unincorporated areas and in its included units of general local government: (i) In which it has authority

to undertake essential community development and housing assistance activities and which do not elect to have their population excluded or (ii) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing activities, or (2) has population in excess of one hundred thousand, a population density of five thousand persons per square mile, and contains within its boundaries no incorporated places as defined by the United States Bureau of the Census. Any urban county which qualified as an urban county in Fiscal Year 1981, the population of which includes all of the population of the county (other than the population of metropolitan cities therein), and the population of which for Fiscal Year 1982 falls below the amount required by clause (1) of the preceding sentence by reason of the 1980 decennial census shall be considered as meeting the population requirements of such clause for Fiscal Year 1983 and shall not be subject to the provisions of § 570.307 in that fiscal year.

(y) "Urban Development Action Grant" (UDAG) means a grant made by the Secretary pursuant to section 119 of the Act and Subpart G of this Part.

§ 570.4 Allocation of funds.

(a) The determination of eligibility of units of general local government to receive entitlement grants, the entitlement amounts, the allocation of appropriated funds to States for use in nonentitlement areas, the reallocation of funds, and the allocation of appropriated funds for discretionary grants under the Secretary's Fund shall be governed by the policies and procedures described in sections 106 and 107 of the Act, as supplemented in this section.

(b) The definitions in § 570.3 shall govern in applying the policies and procedures described in sections 106 and 107 of the Act.

(c) In determining eligibility for entitlement and in allocating funds under sections 106 of the Act for any Federal Fiscal Year, the Department will recognize corporate status and geographical boundaries and the status of metropolitan areas and central cities effective as of July 1 preceding such Federal Fiscal Year, subject to the following limitations:

(1) With respect to corporate status, as certified by the applicable State and available for processing by the Census Bureau as of such date;

(2) With respect to boundary changes or annexations, as accepted for use by the Office of Revenue Sharing (ORS) for the same fiscal year and available for processing by the Census Bureau as of such date, except that any such boundary changes or annexations which result in the population of a unit of general local government reaching or exceeding 50,000 shall be recognized for this purpose whether or not such changes are accepted for use by the ORS; and,

(3) With respect to the status of Metropolitan Statistical Areas and central cities, as officially designated by the Office of Management and Budget as of such date.

(d) In determining whether a county qualifies as an urban county, and in computing Entitlement amounts for urban counties, the demographic values of population, poverty, housing overcrowding, and age of housing of any Indian tribes located within the county shall be excluded. In allocating amounts to States for use in nonentitlement areas, the demographic values of population, poverty, housing overcrowding, and age of housing of all Indian tribes located in nonentitled areas shall be excluded. It is recognized that all such data on Indian tribes are not generally available from the United States Bureau of the Census and that missing portions of data will have to be estimated. In accomplishing any such estimates the Secretary may use such other related information available from reputable sources as may seem appropriate, regardless of the data's point or period of time and shall use the best judgment possible in adjusting such data to reflect the same point or period of time as the overall data from which the Indian tribes are being deducted, so that such deduction shall not create an imbalance with those overall data.

(e) Amounts remaining after closeout of a grant which are required to be returned to HUD under the provisions of § 570.512, Grant closeouts, shall be considered as funds available for reallocation.

§ 570.5 Waivers

The Secretary may waive any requirement of this Part not required by law whenever it is determined that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purposes of the Act.

3. Subpart B of Part 570 is removed and is being reserved for future use.

Subpart B—[Reserved]

4. Subpart C of Part 570 is revised to read as follows:

Subpart C—Eligible Activities

§ 570.200 General policies

(a) *Determination of eligibility.* An activity may be financed in whole or in part with Community Development Block Grant (CDBG) funds only if all of the following requirements are met:

(1) *Compliance with section 105 of the Act.* Each activity must meet the eligibility requirements of section 105 of the Act as further defined in this Subpart.

(2) *Compliance with primary objectives.* The Act establishes as its primary objective the development of viable urban communities, including decent housing and a suitable living environment, and expanding economic opportunity, principally for persons of low and moderate income. For grant recipients under the Entitlement and HUD-administered Small Cities programs, this overall objective is achieved through a program where the projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the broad national objectives of benefit to low and moderate income families or aid in the prevention or elimination of slums or blight; the projected use of funds may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. The choice of eligible activities on which block grant funds are to be expended represents the recipient's determination as to which approach or approaches will best serve these primary objectives, subject to the Secretary's authority to determine that a grantee has failed to carry out its activities in accordance with the primary objective of the Act. Consistent with the foregoing, each recipient under the Entitlement and HUD-administered Small Cities programs must ensure, and maintain evidence, that each of its CDBG funded activities meets one of the broad national objectives as contained in its certification, and each Entitlement grantee must be prepared to demonstrate that its use of funds, taken as a whole, is being carried out to further the primary objective of the Act.

(3) *Compliance with environmental review procedures.* The environmental review and clearance procedures set forth at 24 CFR Part 58 must be completed for each activity (or project

as defined in 24 CFR Part 58), as applicable.

(4) *Cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with the requirements of OMB Circulars A–87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments" or A–122, "Cost Principles for Non-profit Organizations," as applicable. All items of cost listed in Attachment B of those Circulars are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such Circulars and are otherwise eligible under this Subpart. However, pre-agreement costs are limited to those costs described at § 570.200(h).

(5) *Other requirements.* Each activity must comply with all requirements of this Part as they may apply under Subparts D, E, F, and G.

(b) *Special policies governing facilities.* The following special policies apply to:

(1) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the CDBG program may be provided with program funds even if it is part of a multiple use building containing ineligible uses, if:

(i) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(ii) The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(2) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges, such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities are not permitted.

(c) *Special assessments under the CDBG program.* The following policies relate to the use of special assessments under the CDBG program:

(1) *Definition of special assessment.* The term "special assessment" means a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public facility improvement, such as streets, curbs, and gutters. The amount of the fee represents the pro rata share of the capital costs of the public improvement levied against the benefiting properties. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes.

(2) *Special assessments to recover capital costs.* There can be no special assessment to recover that portion of a capital expenditure funded with CDBG funds. Recipients may, however, levy assessments to recover the portion of a capital expenditure funded from other sources. Funds collected through such special assessments are not program income.

(3) *Other uses of CDBG funds for special assessments.* Program funds may be used to pay all or part of special assessments levied against properties owned and occupied by low and moderate income persons when such assessments are used to recover that portion of the capital cost of public improvements financed from sources other than community development block grants, provided that:

(i) The assessment represents that property's share of the capital cost of the eligible facility or improvement; and

(ii) The installation of the public facilities and improvements was carried out in compliance with requirements applicable to activities assisted under this Part.

(d) *Consultant activities.* Consulting services are eligible for assistance under this Part for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

(1) *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds. In no event, however, shall such compensation exceed the maximum daily rate of compensation for a GS–18 as established by Federal law. Such services shall be evidenced by written agreements between the parties which detail the responsibilties, standards, and compensation.

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the Procurement Standards of Attachment O of OMB Circular No. A–102 and are not subject to the GS–18 limitation.

(e) *Recipent determinations required as a condition of eligibility.* In several instances under this Subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§ 570.201(c)(1), 570.201(f), 570.202(b)(3), 570.203, 570.204, and 570.206(f). A written determination is also required for certain relocation costs under § 570.201(i).

(f) *Means of carrying out eligible activities.* Activities eligible under this Subpart may be undertaken either:

(1) by the recipient through:

(i) Its employees; or

(ii) Procurement contracts governed by the requirements of Attachment O of OMB Circular A–102; or

(2) Through agreements with subrecipients;

except that activities authorized in § 570.204(a)(2) may only be undertaken by subrecipients specified in that section.

(g) *Limitation on planning and administrative costs.* (Effective date: This paragraph is effective beginning with the first grant made under Subparts E or F, or the first program year commencing on or after the effective date of this rule.) No more than 20 percent of the sum of any grant plus program income shall be expended for planning and administrative costs, as defined in §§ 570.205 and 570.206 respectively. Recipients of Entitlement grants under Subpart D will be considered to be in conformance with this limitation if *expenditures* for planning and administration during the most recently completed program year did not exceed 20 percent of the sum of the Entitlement grant made for that program year and the program income received during that program year.

(h) *Reimbursement for pre-agreement costs.* Prior to the effective date of the grant agreement, a recipient may obligate and spend local funds for the purpose of environmental assessments required by 24 CFR Part 58, for the planning and capacity building purposes authorized by § 570.205(b), for engineering and design costs associated with an activity eligible under § 570.201 through § 570.204, for the provision of information and other resources to residents pursuant to § 570.206(b), and for relocation and/or acquisition activities carried out pursuant to § 570.606. After the effective date of the grant agreement, the recipient may be reimbursed with funds from its grant to cover those costs, provided such locally funded activities were undertaken in compliance with the requirements of this Part and 24 CFR Part 58.

(i) *Urban Development Action Grant.* Grant assistance may be provided with Urban Development Action Grant funds,

subject to the provision of Subpart G, for:

(1) Activities eligible for assistance under this Subpart; and

(2) Notwithstanding the provisions of § 570.207, such other activities as the Secretary may determine to be consistent with the purposes of the Urban Development Action Grant program.

§ 570.201 Basic eligible activities.

Grant assistance may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by a public agency or private nonprofit entity, by purchase, lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 570.207(a).

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.506.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in § 570.207(a), carried out by the recipient or other public or private nonprofit entities. In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Nonprofit entities and subrecipients as specified in § 570.204 may acquire title to public facilities such as senior centers, centers for the handicapped, or neighborhood facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in § 570.200(b) and the restrictions specified below.

(1) Parks, playgrounds, and recreational facilities established as a result of reclamation and other construction activities carried out in connection with a river and adjacent land, and flood and drainage facilities are eligible only where assistance has been determined to be unavailable under other Federal laws or programs. No CDB funds may be obligated or expended for activities specified in this subparagraph until the recipient has complied with the following requirements:

(i) An application or written request has been made to the Federal agency that customarily funds the proposed activity within the recipient's jurisdiction; and

(ii) The application or request has been rejected, or the recipient has been advised that funds will not be made available for at least 90 days after the date of the application or request, or there has been no response from the Federal agency after 45 days from-the date of the application or request.

(2) The following facilities are eligible only when located in or serving areas where other community development activities have been or are being carried out:

(i) Parking facilities;

(ii) Fire protection facilities and equipment; and

(iii) Solid waste disposal, recycling or conversion facilities.

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* (Effective date: This paragraph is effective as of the beginning of the recipient's program funded from Federal Fiscal Year 1982 and subsequent appropriations.) Provision of public services (including labor, supplies, and materials) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare, or recreational needs. In order to be eligible for CDBG assistance, public services must meet each of the following criteria:

(1) A public service must be either: (i) A new service, or (ii) a quantifiable increase in the level of a service above that which has been provided by or in behalf of the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) in the twelve calendar months prior to the submission of the statement. (An exception to this requirement may be made if HUD determines that the decrease in the level of a service was the result of events not within the control of the unit of general local government.)

(2) The amount of funds used for public services, including services provided by subrecipients under § 570.204, shall not exceed 10 percent of each grant except as provided in subparagrah (3) below. For Entitlement grants under Subpart D, compliance is based on the amount of funds obligated for public service activities in each program year compared to the Entitlement grant made for that program year.

(3) A recipient which allocated more than 10 percent of its grant for public services in its program funded from Federal Fiscal Year 1981 appropriations, may obligate more than 10 percent of its grant for public sevices in each of its program years funded from Federal Fiscal Years 1982, 1983, or 1984 appropriations so long as the amount obligated in any such program year does not exceed the amount allocated in Fiscal Year 1981. For the purposes of this provision, the Fiscal Year 1981 allocation is the amount specified for public service activities in the Cost Summary applicable to the program funded from Fiscal Year 1981 appropriations, as of October 1, 1981.

(f) *Interim assistance.*

(1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the recipient has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public building; and

(ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the recipient determines that such an emergency condition exists and requires immediate resolution, CDBG funds may be used for:

(i) The activities specified in subparagraph (1) above, except for the repair of parks and playgrounds;

(ii) For the clearance of streets, including snow removal and similar activities; and

(iii) The improvement of private properties.

All activities authorized under this subparagraph are limited to the extent necessary to alleviate emergency conditions.

(g) *Payment of the non-Federal share* required in connection with a Federal grant-in-aid program undertaken as part of CDBG activities, provided, that such payment shall be limited to activities otherwise eligible under this Subpart.

(h) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under Title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in § 570.801.

(i) *Relocation.* Relocation payments and assistance for permanently or temporarily displaced individuals, families, businesses, nonprofit organizations, and farm operations where: (1) Required under the provisions of § 570.606(a); and (2) relocation payments and assistance are determined by the recipient to be appropriate as provided in § 570.606(b).

(j) *Loss of rental income.* Payments of housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be utilized for the relocation of individuals, and families displayed by program activities assisted under this Part.

(k) *Removal of architectural barriers.* Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned building, facilities, and improvements. Further information regarding the removal of architectural barriers is available in the current publication of the American National Standards Institute, Inc., ANSI A117.1.

(l) *Privately owned utilities.* CDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

§ 570.202 Eligible rehabilitation and preservation activities.

(a) *Types of buildings and improvements eligible for rehabilitation assistance.* CDBG funds may be used to finance the rehabilitation of:

(1) Privately owned buildings and improvements;

(2) Low income public housing and other publicly owned residential buildings and improvements; and

(3) Publicly owned nonresidential buildings and improvements otherwise eligible for assistance.

Specific information on historic properties is included in paragraph (d) of this section.

(b) *Types of assistance.* CDBG funds may be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section:

(1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties for use or resale for residential purposes;

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(3) Loans for refinancing existing indebtedness secured by a property rehabilitated with CDBG funds if such financing is necessary or appropriate to achieve the recipient's community development objectives;

(4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;

(5) Improvements to increase the efficient use of water through such means as water saving faucets and shower heads and repair of water leaks;

(6) Financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines;

(7) For rehabilitation carried out with CDBG funds, costs of:

(i) Initial homeowner warranty premiums;

(ii) Hazard insurance premiums, except where assistance is provided in the form of a grant; and

(iii) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to § 570.605;

(8) Costs of tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation; and

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under section 312 of the Housing Act of 1964, as amended, and under section 810 of the Act.

(c) *Code enforcement.* Code enforcement in deteriorating or deteriorated areas where such enforcement together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.

(d) *Historic preservation.* CDBG funds may be used for the rehabilitation, preservation, and restoration of historic properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local Inventory of Historic Places, or designated as a State or local landmark or historic district by appropriate law or ordinance. Historic preservation does not include, however, the expansion of properties for ineligible uses, such as buildings for the general conduct of government.

(e) *Renovation of closed school buildings.* CDBG funds may be used to renovate closed school buildings for use as an eligible public facility, for a commercial or industrial facility, or for housing.

§ 570.203 Special economic development activities.

A recipient may use CDBG funds for special economic development activities authorized under this section if it determines that such activities are necessary or appropriate to carry out an economic development project. Special economic development activities are permitted in addition to other activities authorized in this Subpart which may be carried out as part of an economic development project. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

(a) The acquisition, construction, reconstruction, or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the recipient, subrecipients, or private for profit businesses. (Rehabilitation of commercial or industrial buildings and improvements is eligible under § 570.202.)

(b) The provision of assistance to private for profit businesses, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any other activity necessary or appropriate to carry out an economic development project, excluding those described as ineligible in § 570.207(a).

§ 570.204 Special activities by subrecipients.

(a) *Eligible activities.* The recipient may grant CDBG funds to any of the three types of subrecipients specified in paragraph (c) below, to carry out a neighborhood revitalization, community economic development, or energy conservation project. Such a project may include:

(1) Activities listed as eligible under this Subpart; and

(2) Activities not otherwise listed as eligible under this Subpart, except those described as ineligible in § 570.207(a), when the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.

(b) *Recipient responsibilities.* Recipients under Subparts D, F, or G are responsible for ensuring that CDBG funds are utilized by subrecipients in a manner consistent with the requirements of this Part and other applicable Federal, State, or local law. Grantees are also responsible for carrying out the environmental review and clearance responsibilities.

(c) *Eligible subrecipients.* The following are subrecipients authorized to receive grants under this section.

(1) *Neighborhood-based nonprofit organizations.* A neighborhood-based nonprofit organization is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with CDBG funds are to be carried out. A neighborhood is defined as:

(i) A geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood;

(ii) The entire jurisdiction of a unit of general local government which is under 25,000 population; or

(iii) A neighborhood, village, or similar geographical designation, in a new community as defined in § 570.403(a).

(2) *Section 301(d) Small Business Investment Companies.* A section 301(d) Small Business Investment Company is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making.

(3) *Local Development Corporations.* A local development corporation is:

(i) An entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 *et seq.*);

(ii) An entity eligible for assistance under section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696);

(iii) Other entities incorporated under State or local law whose membership is representative of the area of operation of the entity (including nonresident owners of businesses in the area) and which is similar in purpose, function, and scope to those specified in (i) or (ii) above; or

(iv) A State development entity eligible for assistance under Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).

§ 570.205 Eligible planning and policy—planning—management—capacity building activities

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and implementing actions, including, but not limited to:

(1) Comprehensive plans;

(2) Community development plans;

(3) Functional plans, in areas such as:

(i) Housing, including the development of a Housing Assistance Plan;

(ii) Land use;

(iii) Economic development;

(iv) Open space and recreation;

(v) Energy use and conservation;

(vi) Floodplain management in accordance with the requirements of Executive Orders 11988 and 11990;

(vii) Transportation;

(viii) Utilities; and

(ix) Historic preservation.

(4) Other plans and studies such as:

(i) Small area and neighborhood plans;

(ii) Capital improvements programs;

(iii) Individual project plans (but excluding engineering and design cost related to a specific activity which are eligible as part of the cost of such activity under §§ 570.201–570.204);

(iv) The reasonable costs of general environmental and historic preservation studies. However, costs necessary to comply with 24 CFR Part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this Part are eligible as part of the cost of such activities under §§ 570.201–570.204 and are therefore not planning costs for the purposes of § 570.200(g).

(v) Strategies and action programs to implement plans, including development of codes, ordinances and regulations necessary to implement such plans; and

(vi) Support of clearinghouse functions.

(b) *Policy—planning—management—capacity building activities* which will enable the recipient to:

(1) Determine its needs;

(2) Set long-term goals and short-term objectives, including those related to environmental design;

(3) Devise programs and activities to meet these goals and objectives;

(4) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and

(5) Carry out management, coordination and monitoring of activities necessary for effective planning implementation.

§ 570.206 Eligible administrative costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities financed in whole or in part with funds provided under this Part and housing activities covered in the recipient's Housing Assistance Plan (HAP).

(a) *General management, oversight, and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation, and similar costs associated with management, but excluding activity delivery costs which are eligible as part of the cost of carrying out the activity under § 570.201 through § 570.204. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the recipient's staff, the staff of local public agencies, or other staff engaged in general management, coordination, monitoring, and evaluation;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the

program, including such goods and services as rental and maintenance of office space, insurance, utilities, office supplies, and rental or purchase of office equipment.

(b) *The provision of information and other resources to residents* and citizen organizations participating in the planning, implementation, or assessment of activities being carried out with CDBG funds.

(c) *Provision of fair housing counseling services* and other activities designed to further the fair housing objectives of Title VIII of the Civil Rights Act of 1968 and the housing objective of promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of lower income persons.

(d) *Provision of assistance to facilitate performance and payment bonding* necessary for contractors carrying out activities assisted with CDBG funds including payment of bond premiums on behalf of contractors.

(e) *Indirect costs.* Costs may be charged to the CDBG program under a cost allocation plan prepared in accordance with OMB Circulars A–87, or A–122 as applicable.

(f) *Submissions or applications for Federal programs.* Preparation of documents required for submission to HUD or States to receive funds under the CDBG and UDAG programs. In addition, CDBG funds may be used to prepare applications for other Federal programs where the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.

(g) *Administrative expenses to facilitate housing.* The construction of new housing or direct financing of new or existing housing is not an eligible use of CDBG funds, except as described in § 570.207(b)(3). However, CDBG funds may be used for necessary administrative expenses in planning or obtaining financing for housing units as follows: for Entitlement grantees, assistance authorized by this paragraph is limited to units which are identified in the grantee's HUD approved Housing Assistance Plan; for Small cities grantees, assistance authorized by this paragraph is limited to facilitating the purchase or occupancy of existing units which are to be occupied by lower income households, or the construction of rental or owner units where at least 20 percent of the units in each project will be occupied at affordable rents/costs, by lower income persons. Examples of eligible actions are as follows:

(1) The cost of conducting preliminary surveys and analysis of market needs;

(2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings," but excluding architectural, engineering, and other details ordinarily required for construction purposes, such as structural, electrical, plumbing, and mechanical details;

(3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 Housing Assistance Payments Program pursuant to 24 CFR Part 880–883;

(4) Fees associated with processing of applications for mortgage or insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA);

(5) The cost of issuance and administration of mortgage revenue bonds used to finance the acquisition, rehabilitation, or construction of housing, but excluding costs associated with the payment or guarantee of the principal or interest on such bonds; and

(6) Special outreach activities which result in greater landlord participation in Section 8 existing, or similar program for lower income persons.

§ 570.207 Ineligible activities.

The general rule is that any activity that is not authorized under the provisions of §§ 570.201–206 of this Subpart is ineligible to be carried out with CDBG funds. This section identifies two specific activities that are ineligible and provides guidance thought to be necessary in determining the eligibility of several other activities frequently associated with housing and community development.

(a) The following activities may not be carried out using CDBG funds:

(1) Buildings, or portions thereof, used predominantly for the general conduct of government cannot be assisted with CDBG funds. Such buildings include, but are not limited to, city halls and other headquarters of government where the governing body of the recipient meets regularly, courthouses, jails, police stations, and other State or local government office buildings. This does not exclude, however, the removal of architectural barriers under § 570.201(k) and historic preservation under § 570.202(d) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be utilized in the provision of a building or facility for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible.

(2) *General government expenses.* Except as otherwise specifically authorized in this Subpart or under OMB Circular A–87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this Part.

(3) *Political activities.* CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally financed in whole or in part with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(b) The following activities may not be carried out with CDBG funds unless authorized under provisions of § 570.203 or as otherwise specifically noted herein, or when carried out by a subrecipient under the provisions of § 570.204.

(1) *Purchase of equipment.* The purchase of equipment with CDBG funds is generally ineligible.

(i) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A–87 or A–122 as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under § 570.201(c)(2).

(ii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personalty not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase, or to pay depreciation or use allowances (in accordance with OMB Circulars A–87 or A–122, as applicable), for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or as a public service pursuant to § 570.201(e).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, where a public service is being assisted with CDBG funds, the cost of operating and maintaining that portion of the facility in which the service is located is eligible as part of the public service. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs.

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities; and

(3) *New housing construction.* Assistance may not be used for the construction of new permanent residential structures or for any program to subsidize or finance such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR Part 42; or,

(ii) When carried out by a subrecipient pursuant to § 570.204(a)(2).

For the purpose of this paragraph, activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing preconstruction costs set forth in § 570.206(g), are not considered as activities to subsidize or finance new residential construction.

(4) *Income payments.* The general rule is that assistance shall not be used for income payments for housing or any other purpose. Examples of ineligible income payments include the following: payments for income maintenance, housing allowances, down payments, and mortgage subsidies.

5. Subpart D of Part 570 is revised to read as follows:

Subpart D—Entitlement Grants

§ 570.300 General.

This Subpart describes the policies and procedures governing the making of Community Development Block grants to Entitlement communities. The policies and procedures set forth in Subparts A, C, J, K, and O of this Part also apply to Entitlement grantees.

§ 570.301 Presubmission requirements.

(a) Prior to the submission to HUD for its annual grant, the grantee must:

(1) Develop a proposed statement of community development objectives and projected use of funds, including the following items:

(i) The community development objectives the grantee proposes to pursue; and

(ii) The community development activities the grantee proposes to carry out with anticipated CDBG funds, including all funds identified in paragraph (a)(2)(i) below, to address its identified community development objectives. Each such activity must:

(A) Address at least one of the three broad national objectives;

(B) Be eligible pursuant to the provisions of Subpart

(C) Be described in sufficient detail, including location, to allow citizens to determine the degree to which they may be affected.

(2) Meet the following citizen participation requirements:

(i) Furnish citizens with information concerning the amount of CDBG funds expected to be available (including the annual grant, program income, surplus from urban renewal settlement, and proceeds from HUD guaranteed loans) for community development and housing activities, and the range of activities that may be undertaken with those funds;

(ii) Hold at least one public hearing to obtain the views of citizens on the grantee's housing and community development needs; and

(iii) Publish community-wide its proposed statement of community development objectives and projected use of funds so as to afford affected citizens an opportunity to examine the statement's contents, and to provide comments on the proposed statement and on the grantee's community development performance.

(3) Prepare its final statement of community development objectives and projected use of funds. Once the grantee has completed the citizen participation requirements in paragraph (a)(2) above, the grantee must consider any such comments and views received and if the grantee deems appropriate modify the proposed statement. The grantee shall make the final statement available to the public. The final statement may include activities which do not either benefit low and moderate income persons or prevent or eliminate slums and blight only if the grantee identifies such activities in the final statement and certifies that such activities are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available.

(4) Submit and receive approval of its Housing Assistance Plan in accordance with § 570.306.

(b) The grantee may elect not to carry out an activity contained in its final statement or to carry out activities other than those described in such statement, provided it has afforded affected citizens an opportunity to comment on the proposed changes. The grantee shall make available to the public and shall submit to HUD a description of any changes adopted. The procedures in this paragraph shall also be followed when a grantee deletes an activity from or adds an activity to those activities described in applications approved prior to Fiscal Year 1982.

§ 570.302 Submission requirements.

(a) *Content.* In order to receive its annual CDBG Entitlement grant, a grantee must submit the following:

(1) Standard Form 424;

(2) A copy of the grantee's final statement of community development objectives and projected use of funds, covering the same items as listed in § 570.301(a)(1); and

(3) Certifications satisfactory to the Secretary covering all of the items listed in § 570.303.

(b) *Timing of submissions.*

(1) In order to facilitate continuity in its program, the grantee should submit its final statement to HUD at least 30 days prior to the start of its community development program year, but in no event will HUD accept a submission for a grant earlier than December 1 or later than the first working day in September of the Federal Fiscal Year for which the grant funds are appropriated.

(2) A program year shall run for a twelve month period. A grantee may, however, either shorten or lengthen its program year, provided HUD receives written notice of a lengthened program year at least two months prior to the date the program year would have ended if it had not been lengthened, or HUD receives notice of a shortened

(d)(3), (e)(1) and (e)(2) of this section. For this purpose an urban county shall be deemed to have received a grant upon having satisfied the requirements of sections 104 (a), (b) and (c) of the Act, without regard to adjustments which may be made to this grant amount under sections 104(d) or 111 of the Act.

(g) *Notifications of the opportunity to be excluded.* Any county seeking to qualify for an Entitlement grant as an urban county for any Federal fiscal year shall notify each unit of general local government which is located, in whole or in part, within the county and which would otherwise be included in the urban county, but which is eligible to elect to have its population excluded from that of the urban county, that it has the opportunity to make such an election, and that such an election, or the failure to make such an election, shall be effective for the three year period for which the county qualifies as an urban county. These notifications shall be made by a date specified by HUD. A unit of general local government which elects to be excluded from participation as a part of the urban county shall notify the county and HUD in writing by a date specified by HUD.

§ 570.308 Joint requests.

(a) *Joint requests and cooperation agreements.*

(1) Any urban county and any metropolitan city located, in whole or in part, within that county may submit a joint request to HUD to approve the inclusion of the metropolitan city as a part of the urban county for purposes of planning and implementing a joint community development and housing program. Such a joint request shall only be considered if submitted at the time the county is seeking its three year qualification or requalification as an urban county. Such a joint request shall, upon approval by HUD, remain effective for the period for which the county is qualified as an urban county. An urban county may be joined by more than one metropolitan city, but a metropolitan city located in more than one urban county may only be included in one urban county for any program year. A joint request shall be deemed approved by HUD unless HUD notifies the city and the county of its disapproval and the reasons therefore within 30 days of receipt of the request by HUD.

(2) Each metropolitan city and urban county submitting a joint request shall submit an executed cooperation agreement to undertake or to assist in the undertaking of essential community development and housing assistance activities, as defined in § 570.307(c).

(b) *Joint grant amount.* The grant amount for a joint recipient shall be the sum of the amounts authorized for the individual Entitlement grantees, as described in section 106 of the Act. The urban county shall be the grant recipient.

(c) *Effect of inclusion.* Upon urban county qualification and HUD approval of the joint request and cooperation agreement, the metropolitan city shall be considered a part of the urban county for purposes of program planning and implementation for the period of the urban county qualification, and shall be treated the same as any other unit of general local government which is a part of the urban county.

(d) *Submission requirements.* In requesting a grant under this Part, the urban county shall make a single submission which meets the submission requirements of this Subpart D and covering all members of the joint recipient.

6. Subpart K of Part 570 is revised to read as follows:

Subpart K—Other Program Requirements

§ 570.600 General

(a) Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary, among other things, that the grant "will be conducted and administered in conformity with Pub. L. 88–352 and Pub. L. 90–284," and, further, that the grantee "will comply with the other provisions of this title and with other applicable laws." Section 104(d)(1) of the Act requires that the Secretary determine with respect to grants made pursuant to section 106(b) (Entitlement Grants) and 106(d)(2)(B) (HUD-Administered Small Cities Grants), at least on an annual basis, among other things, "whether the grantee has carried out [its] certifications in compliance with the requirements and the primary objectives of this title and with other applicable laws * * *." Certain other statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or Executive Orders which may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental departments or agencies other than the Secretary or the Department. This Subpart K enumerates laws which the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to States made pursuant to section 106(d) of the Act, for purposes of the determinations described above to be made by the Secretary under section 104(d)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws which the Secretary will treat as applicable to grants made to States under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(d)(2) of the Act, see § 570.496.

(b) This Subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.

(c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (Subparts D and F of this Part, respectively), the requirements of this Subpart K are applicable to grants made pursuant to sections 107 and 119 of the Act (Subparts E and G, respectively).

§ 570.601 Pub. L. 88–352 and Pub. L. 90–284; Executive Order 11063.

Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary that the grant "will be conducted and administered in conformity with Pub. L. 88–352 and Pub. L. 90–284." Similarly, section 107 provides that no grant may be made under that section (Secretary's Discretionary Fund) or section 119 (UDAG) without satisfactory assurances to the same effect.

(a) "Pub. L. 88–352" refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 of the Civil Rights Act of 1964 directs each Federal department and agency empowered to extend Federal financial assistance to any program or activity by way of grant to effectuate the foregoing prohibition

by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the statute authorizing the financial assistance. HUD regulations implementing the requirements of Title VI with respect to HUD programs are contained in 24 CFR Part 1.

(b) "Pub. L. 90–284" refers to Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), popularly known as the Fair Housing Act, which provides that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, or national origin. Title VIII further requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of Title VIII. Pursuant to this statutory direction, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing.

(c) Executive Order 11063, as amended by Executive Order 12259, directs the Department to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government. HUD regulations implementing Executive Order 11063 are contained in 24 CFR Part 107.

§ 570.602 Section 109 of the Act.

(a) Section 109 of the Act requires that no person in the United States shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds made available pursuant to the Act. For purposes of this section "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient, or by any unit of government, subrecipient, or private contractor receiving community development funds or loans from the recipient. "Funded in whole or in part with community development funds" means that community development funds in any amount in the form of grants or proceeds from HUD guaranteed loans have been transferred by the recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity.

(b) *Specific discriminatory actions prohibited and corrective actions.*

(1) A recipient may not, under any program or activity to which the regulations of this Part may apply directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(i) Deny any facilities, services, financial aid or other benefits provided under the program or activity.

(ii) Provide any facilities, services, financial aid or other benefits which are different, or are provided in a different form from that provided to others under the program or activity.

(iii) Subject to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.

(iv) Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

(vi) Deny an opportunity to participate in a program or activity as an employee.

(2) A recipient may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

(3) A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds under this part, may not make selections of such site or location which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and of this section.

(4)(i) In administering a program or activity funded in whole or in part with CDBG funds regarding which the recipient has previously discriminated against persons on the ground of race, color, national origin or sex, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program or activity funded in whole or in part with CDBG funds should take affirmative action to overcome the effects of conditions which would otherwise result in limiting participation by persons of a particular race, color, national origin or sex. Where previous discriminatory practice or usage tends, on the ground of race, color, national origin or sex, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(iii) A recipient shall not be prohibited by this part from taking any action eligible under Subpart C to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action in to overcome prior discriminatory practice or usage.

(5) Notwithstanding anything to the contrary in this section, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

(c) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.C.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.

§ 570.603 Labor Standards.

Section 110 of the Act requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with assistance received under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5). By reason of the foregoing requirement, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families. With respect to the labor standards specified in this section, the Secretary of Labor has the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. 1332–15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

§ 570.604 Environmental standards.

Section 104(f) expresses the intent that "the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) * * * [be] most effectively implemented in connection with the expenditure of funds under" the Act. Such other provisions of law which further the purposes of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to section 104(f) of the Act and contained in 24 CFR Part 58. Section 104(f) also provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may under regulations provide for the release of funds for particular projects to grantees who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, and the other provisions of law specified by the Secretary as described above, that would apply to the Secretary were he/she to undertake such projects as Federal projects. Grantees assume such environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary. The procedures for carrying out such environmental responsibilities are contained in 24 CFR Part 58.

§ 570.605 National Flood Insurance Program.

Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 400(a)), on and after July 1, 1975 (or one year after a community has been formally notified of its identification as a community containing an area of special flood hazard, whichever is later) for use in any area that has been identified by the Director of the Federal Emergency Management Agency (see Section 202 of Reorganization Plan No. 3 of 1978, 43 FR 41943) as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under Subpart D, the date of submission of the grantee's final statement pursuant to § 570.302), funds provided under this Part shall not be expended on or after July 1, 1975, or one year after a community has been formally notified, whichever is later, for acquisition or construction purposes in an area so identified as having special flood hazards which is located in a community not in compliance with the requirements of the National Flood Insurance Program pursuant to section 201(d) of said Act (42 U.S.C. 4105(d)). The use of any funds provided under this part for acquisition or construction purposes in identified special flood hazard areas shall be subject to the mandatory purchase of flood insurance requirements of section 102(a) of said Act (42 U.S.C. 4012a).

§ 570.606 Relocation and acquisition.

(a) Section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) (the "Uniform Act") provides that the head of a Federal agency shall not approve any grant to, or contract or agreement with, a "State agency" (as defined in Section 101 of the Uniform Act, 42 U.S.C. 4601, and 24 CFR 42.85 which includes any department, agency or instrumentality of a State or of a political subdivision of a State) under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any persons, unless he/she receives satisfactory assurance from such State agency that certain requirements of the Uniform Act with respect to relocation payments and assistance will be met. Such assurances will be provided in the grant agreement executed by the grantee (see § 570.304(b)). The requirements of the Uniform Act and HUD implementing regulations (24 CFR Part 42) apply to any acquisition of real property by a "State agency" that is carried out with the intention that such acquisition be for a community development activity assisted under this Part and to the displacement of any family, individual, business, nonprofit organization, or farm that results from such acquisition.

(1) Any acquisition of real property by a "State agency" and any displacement resulting from such acquisition of real property shall be considered to be for an activity assisted under the CDBG program and to be subject to the regulations at 24 CFR Part 42 if the acquisition or displacement occurs on or after the date of the submission of the application requesting Federal financial assistance which is granted for a activity for which the acquisition has been or will be undertaken (or, in the case of a grant made pursuant to Subpart D, the date of submission of the grantee's final statement pursuant to § 570.302). However, if the recipient determines that any acquisition or displacement was not carried out for an assisted activity, and the HUD Area Office serving the locality concurs in that determination, such acquisition or displacement shall not be subject to these regulations. The recipient's request for HUD concurrence shall include its certification that at the time of the acquisition it did not intend to use the property for an assisted activity and appropriate documentation to establish that fact.

(2) The recipient or HUD, which shall monitor compliance with the Uniform Act, may determine that an acquisition prior to submission of an application for financial assistance (or final statement) and any resulting displacement were carried out for an assisted activity and are subject to these regulations. In the absence of such a determination by the recipient or HUD, any such acquisition or displacement occurring prior to submission of an application (or final statement) shall not be subject to these regulations. The recipient may at any time request a HUD determination as to whether or not such an acquisition and any resulting displacement are considered to be for an assisted activity and to be subject to these regulations. The request shall be submitted to the HUD Area Office and shall include appropriate background documentation.

(3) If the owner or occupant of a property disagrees with the recipient's determination that the Uniform Act and regulations at 24 CFR Part 42 do not apply to the acquisition of the property or to a displacement resulting from the acquisition, he/she may file an appeal under 24 CFR Part 42 Subpart J (Appeals), whether or not the acquisition or displacement occurs before or after submission of the application for financial assistance (or final statement). The specific payments and other assistance for which an appeal may be filed are set forth in 24 CFR 42.703(a).

(4) The costs of relocation payments and assistance under Title II of the Uniform Act shall be paid from funds provided by this Part and/or such other funds as may be available by the locality from any source.

(b) Pursuant to section 105(a)(11) of the Act, the grantee may also provide relocation payments and assistance for individuals, families, businesses, nonprofit organizations and farm operations displaced by an activity that is not subject to the Uniform Act, and also may provide relocation payments andother assistance at levels above those established under the Uniform Act. Unless such payments and assistance are made pursuant to State or local law, the recipient shall make such payments only upon the basis of a written determination that such payments are appropriate (see § 570.201(i)) and shall adopt a written policy available to the public setting forth the relocation payments and assistance it elects to provide and providing for equal payments and assistance within each class of displacees.

(c) Section 305 of the Uniform Act (42 U.S.C. 4655) provides that the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property unless he/she receives satisfactory assurances from such State agency that: (1) In acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 of the Uniform Act (42 U.S.C. 4651) and the provisions of section 302 thereof (42 U.S.C. 4651) and (2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 of the Uniform Act (42 U.S.C. 4653, 4654). Appropriate assurances to such effect will be provided in the grant agreement executed by the grantee.

§ 570.607 Employment and contracting opportunities.

(a) Grantees shall comply with Executive Order 11246 and the regulations issued pursuant thereto (41 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. As specified in Executive Order 11246 and the implementing regulations, contractors and subcontractors on Federal or federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) requires, in connection with the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible opportunities for training and employment be given to lower income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project. Grantees shall adopt appropriate procedures and requirements to assure good faith efforts toward compliance with the statutory directive. HUD regulations at 24 CFR Part 135 are not directly applicable to activities assisted under this Part but may be referred to as guidance indicative of the Secretary's view of the statutory objectives in other contexts.

§ 570.608 Lead-based paint.

(a) Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs the Secretary to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance in any form. Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures constructed or rehabilitated with assistance provided under this Part.

(b) Section 302 of the Lead-Based Poisoning Prevention Act (42 U.S.C. 4822) directs the Secretary to establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary. Pursuant to such authority and the Secretary's general rulemaking authority, the Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR Part 35, Subpart C, and requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1950 at 24 CFR Part 35, Subpart A. The requirements of 24 CFR Part 35, Subpart A, are applicable to purchasers and tenants of residential structures constructed prior to 1950 and assisted under this Part, and the requirements of 24 CFR Part 35, Subpart C, are applicable to existing residential structures which are rehabilitated with assistance provided under this Part.

§ 570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.

CDBG funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

§ 570.610 Uniform administrative requirements and cost principles.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of OMB Circular Nos. A-102, Revised, A-110, A-87, and A-122, as applicable, as they relate to the acceptance and use of Federal funds under this Part.

§ 570.611 Conflict of interest.

(a) *Applicability.*

(1) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified at § 570.204(c)), the conflict of interest provisions in Attachment O of OMB Circulars A-102, and A-110, respectively, shall apply.

(2) In all cases not governed by Attachment O or OMB Circulars, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient,

by its subrecipients, or to individuals, businesses and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties of facilities pursuant to § 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to §§ 570.203, 570.204 or 570.455).

(b) *Conflicts prohibited.* Except for approved eligible administrative or personnel cost, the general rule is that no persons described in paragraph (c) below who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this Part or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such interest or benefit during, or at any time after, such person's tenure.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or subrecipients under § 570.204, which are receiving funds under this Part.

(d) *Exceptions: threshold requirements.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

§ 570.612 Displacement

(a) *Definition.* "Displacement" means the involuntary movement, except temporary relocation, of a household from a dwelling unit resulting from its acquisition, rehabilitation, or demolition when: (1) Funded in whole or in part with CDBG funds; or (2) funded with non-CDBG funds where the acquisition, rehabilitation, or demolition is a prerequisite for an activity carried out with CDBG funds (e.g. acquisition of land with local funds for a neighborhood facility to be constructed with CDBG funds). "Displacement" also means the involuntary movement, except temporary relocation, of a household from a dwelling unit necessitated by CDBG assisted code enforcement.

(b) *General policy.* Section 902 of the Housing and Community Development Amendments of 1978 (Pub. L. 95–557) provides that, in the administration of Federal housing and community development programs, consistent with other program objectives and goals, involuntary displacement of persons from their neighborhoods should be minimized. This general policy is implemented in the Entitlement grant program through the requirements of § 570.606. It is implemented in the HUD-administered Small Cities program by means of selection criteria described in § 570.424(c) and § 570.428(c), and in the Urban Development Action Grant program by means of the selection criterion described in § 570.459(l).

7. Subpart M of Part 570 is revised to read as follows:

Subpart M—Loan Guarantees

§ 570.700 Eligible applicants.

(a) Units of general local government entitled to receive a grant under section 106(e) of the Act (metropolitan cities and urban counties) may apply for loan guarantee assistance under this Subpart.

(b) Public agencies may be designated by eligible units of general local government to receive a loan guarantee on notes or other obligations issued by the public agency in accordance with this Subpart. In such case the applicant unit of general local government shall be required to pledge its current and future grants under Title I as security for the notes or other obligations issued by the public agency.

§ 570.701 Eligible activities.

Loan guarantee assistance under this Subpart may be utilized for the following activities undertaken by the unit of general local government or its designated public agency, provided such activities are otherwise eligible under the provisions of § 570.201 through § 570.203 and meet the requirements of § 570.200.

(a) Acquisition of improved or unimproved real property in fee or by long-term lease, including acquisition for economic development purposes.

(1) Acquisition for economic development purposes may include agreements for the purchase of real property to be improved by the seller prior to the acquisition. Obligations to purchase under such agreements may be contingent on the procurement of interim financing by the seller, and may provide for a leaseback of the improved property to the seller, including an option to purchase after full payment of the loan guaranteed under this Subpart.

(2) In the purchase of real property pursuant to paragraph (a)(1) of this section, the assisted activity includes the acquisition and/or improvements undertaken by the seller in whole or in part with interim financing obtained in reliance on the obligation to purchase the improved property with guaranteed loan funds. The agreement described in paragraph (a)(1) of this section shall specify that the obligation to purchase is contingent on compliance in the undertaking of interim financed activities with the requirements

applicable to activities assisted under this Subpart.

(b) Rehabilitation of real property owned or acquired by the unit of general local government or its designated public agency.

(c) Payment of interest on obligations guaranteed under this Subpart.

(d) Relocation payments and assistance for individuals, families, businesses, nonprofit organizations and farm operations displaced as a result of activities financed with loan guarantee assistance.

(e) Clearance, demolition and removal, including movement of structures to other sites, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

(f) Site preparation, including construction, reconstruction, or installation of public improvements, utilities, or facilities (other than buildings) related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

§ 570.702 Application requirements.

(a) *Presubmission requirements.*

(1) Prior to submission of an application for loan guarantee assistance to HUD, the applicant must comply with the presubmission requirements specified in § 570.301 with respect to the activities proposed for loan guarantee assistance.

(2) If an application for loan guarantee assistance is simultaneous with the applicant's submission for its entitlement grant, the applicant may utilize the statement of community development objectives and projected use of funds prepared for its annual grant pursuant to § 570.301 by including and identifying the activities to be undertaken with the guaranteed loan funds.

(b) *Submission requirements.* An application for loan guarantee assistance shall be submitted to the appropriate HUD Area Office and shall consist of the following:

(1) A copy of the applicant's final statement of community development objectives and projected use of guaranteed loan funds.

(2) A description of how each of the activities to be carried out with the guaranteed loan funds meets one of the standards in § 570.901(b).

(3) A schedule for repayment of the loan which identifies the sources of repayment.

(4) A certification providing assurance that the applicant possesses legal authority to make the pledge of grants required under § 570.703(b)(2).

(5) Certifications required pursuant to § 570.303. For the purposes of this requirement, the terms "grant" and "CDBG" in such certifications shall also mean loan guarantee.

(c) *Economic feasibility and financial risk.* The Secretary will make no determination with respect to the economic feasibility of projects proposed to be funded with the proceeds of guaranteed loans; such determination is the responsibility of the applicant. In determining whether a loan guarantee constitutes an acceptable financial risk, the Secretary will consider the applicant's current and future entitlement block grants as the primary source of loan repayment. Approval of a loan guarantee under this Subpart is not to be construed, in any way, as indicating that HUD has agreed to the feasibility of a project beyond recognition that block grant funds should be sufficient to retire the debt.

(d) *HUD review and approval of applications.*

(1) HUD will normally accept the grantee's certifications. The Secretary reserves the right, however, to consider relevant information which challenges the certifications and to require additional information or assurances from the grantee as warranted by such information.

(2) The Area Office shall review the application for compliance with requirements specified in this Subpart and forward the application together with its recommendation for approval or disapproval of the requested loan guarantee to HUD Headquarters.

(3) The Secretary may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

(i) The Secretary determines that the guarantee constitutes an unacceptable financial risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(A) The length of the proposed repayment period;

(B) The ratio of expected annual debt service requirements to expected annual grant amount;

(C) The applicant's status as a metropolitian city or urban county during the proposed repayment period; and

(D) The applicant's ability to furnish adequate security pursuant to § 570.703(b).

(ii) The guarantee requested exceeds the maximum loan amount specified under §570.703(a).

(iii) Funds are not available in the amount requested.

(iv) The applicant's performance does not meet the standards prescribed in § 570.909.

(v) Activities to be undertaken with the guaranteed loan funds are not listed as eligible under § 570.201 through § 570.203 and § 570,701 (a) through (f).

(4) The Secretary will notify the applicant in writing that the loan guarantee request has either been approved, reduced or disapproved. If the request is reduced or disapproved, the applicant shall be informed of the specific reasons for reduction or disapproval. If the request is approved, the Secretary shall issue an offer of commitment to guarantee obligations of the applicant or the designated public agency subject to such conditions as the Secretary may prescribe, including the conditions for release of funds described in paragraph (e).

(e) *Environmental review.* The applicant shall comply with HUD environmental review procedures (24 CFR Part 58) leading to certification for the release of funds for each project carried out with loan guarantee assistance. These procedures set forth the regulations, policies, responsibilities and procedures governing the carrying out of environmental review responsibilities of applicants.

For the purposes of this paragraph, the "release of funds" shall be deemed to occur at the time of guarantee of notes or other obligations by the Secretary.

§ 570.703 Loan requirements.

(a) *Maximum loan amount.* No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the total outstanding notes or obligations guranteed under this Subpart on behalf of the applicant and each public agency duly designated by the applicant would thereby exceed an amount equal to three times the amount of the entitlement grant made pursuant to § 570.304 to the applicant.

(b) *Security requirements.* To assure the repayment of notes or other obligations and charges incurred under this Subpart and as a condition for receiving loan guarantee assistance, the applicant (or the applicant and designated public agency, where appropriate) shall:

(1) Enter into a contract with HUD, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed hereunder;

(2) Pledge any grant made or for which the applicant may become eligible under this Part; and

(3) Furnish, at the discretion of the Secretary, such other security as may be

deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this Part or disposition proceeds from the sale of land or rehabilitated property.

(c) *Use of grants for loan repayment.* Notwithstanding any other provision of this Part:

(1) Grants allocated to an applicant under this Part (including program income derived therefrom) are authorized for use in the payment of principal and interest due (including such servicing, underwriting, or other costs as may be authorized by the Secretary) on the notes or other obligations guaranteed pursuant to this Subpart.

(2) The Secretary may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the note or other obligation guaranteed pursuant to this Subpart, or to the purchase of such obligation, in accordance with the terms of the contract required by paragraph (b)(1) of this section.

(d) *Debt obligations.* Notes or other obligations guaranteed pursuant to this Subpart shall be in the form and denominations prescribed by the Secretary. Such notes or other obligations shall be issued and sold only to the Federal Financing Bank under such terms as may be prescribed by the Secretary and the Federal Financing Bank.

(e) *Taxable obligations.* Interest earned on obligations guaranteed under this Subpart shall be subject to Federal taxation as provided in section 108(j) of the Act.

All applicants or designated public agencies issuing guaranteed obligations must bear the full cost of interest.

(f) *Loan repayment period.* As a general rule, the repayment period for a loan guaranteed under this Subpart shall be limited to six years. However, a longer repayment period may be permitted in special cases where it is deemed necessary to achieve the purposes of this Part.

§ 570.704 Federal guarantee.

The full faith and credit of the United States is pledged to the payment of all guarantees made under this Subpart. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

§ 570.705 Applicability of rules and regulations.

The provisions of Subparts A, C, D, J, K and O shall apply to this Subpart, except to the extent they are specifically modified or augmented by the provisions of this Subpart.

8. Subpart O of Part 570 is revised to read as follows:

Subpart O—Program Management

* * * * *

§ 570.901 Review for compliance with primary objectives.

(a) *General.* The Secretary will review each applicable grantee's performance to determine whether the grantee has complied with the requirements under § 570.200(a)(2).

(b) *Standards.* In determining whether each of the grantee's funded activities meets one of the broad national objectives contained in its certification, the Secretary will consider whether the activity falls within one of the following standards:

(1) *Activities benefiting low and moderate income persons.* The following activities, in the absence of substantial evidence to the contrary, will be considered to benefit low and moderate income persons. In determining whether an activity will actually benefit low and moderate income persons, the net effect of the completed activity shall be considered. Thus, mere location of an activity in a low or moderate income area, while generally a primary consideration, does not conclusively demonstrate that the activity benefits low and moderate income persons. Further, the grantee shall appropriately ensure that activities that meet this standard do not benefit moderate income persons to the exclusion of low income persons.

(i) Any activity, other than residential rehabilitation, which is designed so that at least a majority of the beneficiaries are low and moderate income persons. The following are examples of activities which meet this standard:

(A) An activity, other than residential rehabilitation, which serves an area, delineated by the recipient, where a majority of the residents are low and moderate income persons. Such an area need not be coterminous with census tract boundaries.

(B) Economic development activities designed to create or retain permanent jobs, the majority of which are available or will be available to low and moderate income persons. Jobs are considered to be available to low and moderate income persons based on the nature and extent of the skills, education, and experience required to qualify for the jobs, training opportunities which would make such jobs available to low and moderate income persons who would not otherwise qualify, advertising and recruiting efforts directed toward low and moderate income persons, and the accessibility of the jobs to areas where substantial numbers of low and moderate income persons reside.

(C) A facility, such as a senior center, which is used principally by low and moderate income persons. A facility that is designed for and used by senior citizens or the handicapped will be presumed to meet this standard.

(D) An activity which has income eligibility requirements that limit the benefits of the activity to low and moderate income persons.

(E) General improvements to a neighborhood business area which serves a primarily residential area with a majority of by low and moderate income persons. General improvements include, but are not limited to, street and related improvements, walkways, parking facilities, and facade improvements.

(F) Assistance to a specific business which provides services primarily to residents of an area with a majority of low and moderate income persons.

(ii) A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements.

(iii) An activity which must be carried out prior to or as an integral part of an activity which will principally benefit low and moderate income persons, where the cost of the assisted activity is not unreasonable in relation to the low and moderate income benefit to be provided. An example is the extension of water and sewer lines to permit construction of lower income housing..

(iv) Rehabilitation of a residential structure occupied by low and moderate income persons. Where such a structure contains more than one dwelling unit, it will be considered to qualify under this standard if, following rehabilitation, the majority of the units are occupied by low and moderate income persons at affordable rents. A grantee shall adopt and make public its criteria for determining "affordable rents" for this purpose.

(v) An eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly housing project where at least 20 percent of the units will be occupied by low and moderate income households; except that, in the case of a project

where less than a majority of the units will be so occupied, the portion of total development cost of the project to be borne by CDBG funds may be no greater than the proportion of the total number of units in the project which will be occupied by low and moderate income households.

(vi) An activity that serves an area having less than a majority of low and moderate income persons will also be considered to meet the objective of benefiting low and moderate income persons where the grantee community has no areas within its jurisdiction where low and moderate income persons constitute a majority, or the grantee has so few such areas or that such areas are so small that it is plainly inappropriate to address the needs of its low and moderate income residents by limiting funded activities to such areas. In such circumstances, the activity must:

(A) Serve an area that is among those having the largest proportion of low and moderate income persons in the grantee's jurisdiction. Beginning with the program year funded from Federal Fiscal Year 1985 appropriations, only areas that are within the upper one-fourth of all areas of the grantee's jurisdiction in terms of degree of concentration of low and moderate income persons will be considered to meet this test;

(B) Clearly meet the need of low and moderate income persons in the area; and

(C) Benefit low and moderate income persons at least in proportion to their share of the population in the area the activity serves.

(2) *Activities which aid in the prevention or elimination of slums or blight.* The following activities, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(i) *Activities in a slum or blighted area.*

(A) *Definition of a slum or blighted area.* An area delineated by the grantee:

(*1*) Which meets a definition of a slum, blighted, deteriorated, or deteriorating area under State or local law; *and*

(*2*) Where there is a substantial number of deteriorating or dilapidated buildings or improvements throughout the area.

(B) *Qualifying activities.* In order for an activity to qualify under this standard, it must be designed to address one or more of the conditions which qualified the area. Residential rehabilitation will be considered to meet this standard only where each structure rehabilitated is considered substandard under local definition before rehabilitation. At a minimum, this definition must include units which do not meet the Existing Housing Quality Standards (24 CFR 882.109). Also, in cases where all deficiencies making a structure substandard are eliminated, this standard permits assistance for less critical work on that structure. (Note: Despite this restriction, any rehabilitation activity which benefits low and moderate income households, as described in paragraph (b)(1)(iv) of this section, can be undertaken without regard to the area in which it may be located or the extent of rehabilitation assisted.)

(C) *Documentation.* The grantee must describe in its files the area boundaries, and the conditions of the area at the time of its designation.

(ii) *Activities outside a slum or blighted area.* Acquisition, demolition, rehabilitation, relocation, and historic preservation activities designed to eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area. Under this standard, rehabilitation for other than low and moderate income households is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

(iii) *Urban renewal completion.* Activities included in the urban renewal plan most recently approved by HUD under Title I of the Housing Act of 1949, as amended (42 U.S.C. 1450 *et seq.*) which are necessary to complete an urban renewal project.

(3) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this standard if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the certification by the recipient.

(c) *Area benefit activities.* For purposes of determining compliance with the primary objectives, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(d) *Planning and administrative costs.* Program funds expended for planning and administrative costs under § 570.205 and § 570.206 will be considered to address the primary objectives.

(e) *Transition provision.*

(1) *Continuation of projects approved under past rules.* Activities carried out with CDBG funds from any year (including those carried out with funds awarded in Federal Fiscal Year 1982 and thereafter) which are integral components of projects approved by HUD in program years 1979, 1980 and 1981 will be considered to address the primary objectives if such projects meet criteria set forth at 24 CFR 570.302 (d), (e) or (f) under regulations published on August 27, 1979 (44 FR 50261).

(2) *All other activities.* Activities for which CDBG funds are obligated within 120 days of the effective date of this rule will be considered to address the primary objectives if such activities meet either the standards of this section or the criteria set forth at 24 CFR 570. 302 (d), (e), or (f) under regulations published on August 27, 1979 (44 FR 50261).

(f) *Appropriateness to furthering primary objective.*

(1) Notwithstanding that each of a grantee's funded activities may comply with one of the standards contained in paragraph (b) of this section, the Secretary may determine that an entitlement grantee's use of funds, taken as a whole, is plainly inappropriate to furthering the primary objective of the Act.

(2) If a majority of funds expended during a period reported upon by a grantee in a performance report submitted to the Secretary has been expended on activities which meet the standard indentified in paragraph (b)(1) of this section, the grantee's use of funds taken as a whole will not be subject to further examination with respect to whether the grantee's use of funds, taken as a whole, is plainly inappropriate to furthering the primary objective of the Act. If a majority of funds expended during a reporting period has not been expended on activities meeting such standard, the grantee's performance will be subject to further examination taking into consideration, among other factors, the extent to which funded activities undertaken in prior years have been directed to the needs of low and moderate income persons.

(3) In determining the proportion of funds expended for activities meeting the standard identified in paragraph (b)(1) of this section for purposes of applying the review standard prescribed in the first sentence of subparagraph (2) above:

(i) Cost of administration and planning cited in § 570.205 and § 570.206 will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the grant, and, accordingly, shall be excluded from the calculation;

(ii) Funds expended for repayment of urban renewal temporary loans shall also be excluded.

(g) *Determination of failure of compliance.* If the Secretary determines that an activity does not meet any of the standards identified in paragraph (b) of this section or that an Entitlement grantee's use of funds, taken as a whole, is plainly inappropriate to furthering the primary objective of the Act, the grantee will be notified and provided a reasonable opportunity to demonstrate to the satisfaction of the Secretary that the activity questioned addresses one of the broad national objectives or that the Entitlement grantee's use of funds has been carried out to further the primary objective of the Act. Failure to so demonstrate will be cause for the Secretary to determine, pursuant to Section 104(d)(1) of the Act, that the grantee has failed to carry out its activities and its certifications in accordance with the primary objectives of the Act.

* * * * *

(Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) and Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: September 16, 1983.

Stephen J. Bollinger,

Assistant Secretary for Community Planning and Development.

[FR Doc. 83-25749 Filed 9-22-83; 8:45 am]

BILLING CODE 4210-29-M

CONFLICT OF INTEREST PROVISIONS APPLICABLE TO GRANTEES UNDER THE HUD COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

(Prepared by the HUD Office of Regional Counsel, Region VIII)

Conflicts of interest under the HUD Community Development Block Grant Program are regulated by two distinct provisions. The first is Item II of the Assurances, one of the forms submitted with the application. Item 11 requires the applicant to:

> "establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties."

The second conflict of interest provision is Paragraph 11 of the Grant Agreement, which states:

> "No member, officer, or employee of the grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or sub-contract, or the proceeds thereof, for work to be performed in connection with the program assisted under the agreement. The grantee shall incorporate, or cause to be incorporated, in all such contracts or sub-contracts a provision prohibiting such interest pursuant to the purposes of this section."

The phrases "private gain" and "interest" refer to personal benefits (financial or otherwise) which a person might receive as a result of the Grantee's action. It can be contrasted with "public gain" which provides benefit to everyone in the community. For example, building a new fire station for the community would provide public gain in which all members of the community including members of the community's governing body and its employees would share. However, if a member of the community's governing body were a contractor and he received a contract to build the new fire station, that would be

a private gain for him and would violate the paragraphs quoted above. Obviously, these are extreme examples and there are many others which are not as clear. It is hoped that the Community Development Program will benefit everyone in the community, however, no one in the community should get a special advantage because he, his friend, or relative holds the power to make or influence certain decisions with regard to the program. We have no objection to public officials or employees receiving benefits which are incidental to their being members of a larger group which is receiving benefits, so long as it is not because of their special position in relation to the program.

In the past potential conflicts of interest were handled by written disclosure to the appropriate HUD office, which then decided whether to issue a waiver or take some other action. Under the new Community Development Act Congress clearly mandated that the judgments and procedures be made by the local governing body. Consistent with this philosophy, HUD will allow the local governing body to establish its own procedures which HUD will question only if they are clearly inadequate or unreasonable. These procedures must insure that every decision made in administering the program is in the nature of an "arms-length" business transaction. The procedures should make certain that decision-makers and employees do not use their positions or their inside information to gain any kind of special consideration for themselves, their relatives, their friends, or those with whom they have business or other ties. The governing body's decisions should be based on what will result in the most efficient use of funds in order to provide the greatest benefit to the community as a whole.

Some examples of procedures acceptable to HUD are listed below. They are presented for illustrative purposes only, since there are certainly other types of safeguards which HUD would consider adequate. In addition, some of the listed safeguards may not be necessary or appropriate for some communities or some decisions.

The examples are:

1. A resolution or by-law adopted by the local governing body which states that officers and employees recognize that their responsibility in conducting the Community Development Program is primarily to the community as a whole.

2. A provision that all meetings are open to the public and that minutes and written records will be kept of all business relating to the program.

3. A requirement that, as soon as an individual connected with the program finds that he or someone else is in a position to make a decision which might benefit himself or his family, he disclose this to the governing body and then disqualify himself from further participation until the matter is resolved.

4. A requirement that, when the governing body receives notice of such questionable interest, it disclose the matter at an open meeting; and a further requirement that the governing body (with the affected individual abstaining) decide whether the situation is acceptable (there is no real conflict), whether the person creating the conflict should resign or be disqualified from the specific matter, whether the person recieving the benefits should be disqualified, or another appropriate resolution of the conflict.

5. The duties and tasks of the director of the program could be specifically outlined. The director could be required to report frequently to the governing body at regular open meetings. Thus, the governing body and the director would be aware of the exact scope of his duties and authority, and control over his activities would be maintained by the governing body. All major decisions, including awarding of contracts, could be reserved to the governing body and made in open meetings.

CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

Sec.

1501. Definitions.
1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
1503. Nonpartisan candidacies permitted
1504. Investigations; notice of hearing
1505. Hearings; adjudications; notice of determinations
1506. Orders; withholding loans or grants; limitations
1507. Subpenas and depositions.
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§ 1501. Definitions

For the purpose of this chapter -

(1) "State" means a State or territory or possession of the United States;

(2) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;

(3) "Federal agency" means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and

(4) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include-

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

§ 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not -

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency,

or person for political purposes; or
(3) be a candidate for elective office.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.
(c) Subsection (a)(3) of this section does not apply to -
(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;
(2) the mayor of a city;
(3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil service system; or
(4) an individual holding elective office.

§ 1503. Nonpartisan candidacies permitted

"Section 1502(a)(3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected".

§ 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Special Counsel. On receipt of the report, or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall -
(1) fix a time and place for a hearing; and
(2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.
The hearing may not be held earlier than 10 days after the mailing of the notice.

§ 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Merit Systems Protection Board shall -

(1) determine whether a violation of section 1502 of this title has occurred;

(2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and

(3) notify the officer or employee and the agency of the determination by registered or certified mail.

§ 1506. Orders; withholding loans or grants; limitations

(a) When the Merit Systems Protection Board finds -

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he has violated section 1502 of this title and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency; the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination or order of the Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local

agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

§ 1507. Subpenas and depositions

(a) The Merit Systems Protection Board may require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Board may sign subpenas, and members of the Board and its examiners when authorized by the Board may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpena, the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Board, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any state of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Board in obedience to a subpena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

§ 1508. Judicial review

A party aggrieved by a determination or order of the Merit Systems Protection Board under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless -

(1) the court specifically orders a stay; and

(2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; and the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on cetiorari or certification as provided by section 1254 of title 28. If a provision of this section is held

to be invalid as applied to a party by a determination or order to the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

As amended Public Law 95-454, 10/13/78.

OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for State and Local Governments

AGENCY: Office of Management and Budget.

ACTION: Final policy.

SUMMARY: This notice advises that Federal Management Circular 74–4 (Revised), dated July 18, 1974, is reissued under its original designation of Office of Management and Budget Circular No. A–87. No substantive changes are made in the Circular. The Circular is set forth below in its entirety.

EFFECTIVE DATE: The revision was effective January 15, 1981.

FOR FURTHER INFORMATION CONTACT: Palmer Marcantonio, Deputy Chief, Financial Management Branch, Budget Review Division, 6002 New Executive Office Building, Washington, D.C. 20503, 202/395–4773.

TO OBTAIN SINGLE COPIES OF THE CIRCULAR, CONTACT: Document Distribution Center, Office of Administration, G–236 New Executive Office Building, Washington, D.C. 20503.

TO OBTAIN MULTIPLE COPIES, CONTACT: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Daniel F. Mann,

Budget and Management Officer.

January 15, 1981.

To: The Heads of Executive Departments and Establishments.

Subject: Cost principles for State and local governments.

1. *Purpose.* This Circular establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments.

2. *Supersession.* This Circular supersedes Federal Management Circular 74–4 as revised. The Circular is reissued under its original designation of OMB Circular A–87.

3. *Summary of changes.* No substantive changes are made in the Circular.

4. *Policy intent.* This Circular provides principles for determining the allowable costs of programs administered by State, local, and federally-recognized Indian tribal governments under grants from and contracts with the Federal Government. They are designed to provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between grantees and the Federal Government. The principles are for determining costs only and are not intended to identify the circumstances nor to dictate the extent of Federal and State or local participation in the financing of a particular project. They are designed to provide that federally-assisted programs bear their fair share of costs recognized under these principles except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

5. Applicability and scope.

a. The provisions of this Circular apply to all Federal agencies responsible for administering programs that involve grants and contracts with State, local, and federally-recognized Indian tribal governments.

b. Its provisions do not apply to grants and contracts with:

(1) Publicly-financed educational institutions subject to Office of Management and Budget Circular A–21, and

(2) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies.

Any other exceptions will be approved by the Office of Management and Budget in particular cases where adequate justification is presented.

6. *Attachments.* The principles and related policy guides are set forth in the attachments, which are:

Attachment A—Principles for determining costs applicable to grants and contracts with State, local, and federally-recognized Indian tribal governments.

Attachment B—Standards for selected items of cost.

7. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503, telephone 202–395–4773.

James T. McIntyre, Jr.

Director.

[Circular No. A–87]

Attachment A—Principles for Determining Costs Applicable to Grants and Contracts With State, Local, and Federally Recognized Indian Tribal Governments

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A. *Purpose and scope.*

1. *Objectives.* This Attachment sets forth principles for determining the allowable costs of programs administered by State, local, and federally-recognized Indian tribal governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally-assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State, local, and federally recognized Indian tribal governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally-assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management

techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied by all Federal agencies in determining costs incurred by State, local, and federally recognized Indian tribal governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly-financed educational institutions subject to Office of Management and Budget Circular A-21, and (b) publicly-owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies.

B. *Definitions.*

1. *Approval or authorization of the grantor Federal agency* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State, local, or federally-recognized Indian tribal governments.

6. *Federally-recognized Indian tribal governments* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

7. *Grant* means an agreement between the Federal Government and a State, local, or federally-recognized Indian tribal government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this Circular as applicable to grants in general also apply to any federally-sponsored cost reimbursement-type of agreement performed by a State, local, or federally-recognized Indian tribal government.

8. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

9. *Grantee* means the department or agency of State, local, or federally recognized Indian tribal government which is responsible for administration of the grant.

10. *Local unit* means any political subdivision of government below the State level.

11. *Other State or local agencies* means department or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

12. *Services,* as used herein, means goods and facilities, as well as services.

13. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and inlcude procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

C. *Basic guidelines.*

1. *Factors affecting allowability of costs.* To allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant programs, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State, local or federally-recognized Indian tribal governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.*

a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this Circular may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in Section J.

3. *Applicable credits.*

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances, recoveries or indeminties on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirments under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. Composition of Cost

1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow:

E. Direct Costs

1. *General.* Direct costs are those that can be identified specifically with a

particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and efforts devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. Indirect Costs

1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Circular. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used.

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.*

a. Federal grants may be subject to laws that limit the amount of indirect costs that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Circular, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Circular, the amount not recoverable as indirect costs under a grant not be shifted to another federally-sponsored grant program or contract.

G. Cost Incurred by Agencies Other Than the Grantee

1. *General.* The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs (Section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in Section F.2.a.

H. Cost Incurred by Grantee Department for Others

1. *General.* The principles provided in Section G will also be used in determining the cost of services provided by the grantee department to another agency.

J. Cost Allocation Plan

1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally-sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally-sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Health and Human Services in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by grantees in preparation of cost allocation plans.

This responsibility applies to both central support services at the State, local, and Indian tribal level and indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.*

a. The Department of Health and Human Services, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single cognizant Federal agency will have responsibility similar to that set forth in a. above, for the negotiation, approval, and audit of the indirect cost proposal. A current list of agency assignments is maintained by the Office of Management and Budget.

c. Questions concerning the cost allocation plans approved under a. and b. above, should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.*

a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is maintained by the the Office of Management and Budget.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. *Negotiation and approval of indirect cost proposals for federally recognized Indian tribal governments.* The Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

7. *Resolution of problems.* To the extent that problems are encountered among the Federal agencies in connection with 4 and 5 above, the Office of Management and Budget will lend assistance as required.

[Circular No. A-87]

Attachment B—Standards for Selected Items of Costs

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A. *Purpose and applicability.*

1. *Objective.* This Attachment provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Attachment A of this Circular.

B. *Allowable costs.*

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes costs incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or Indian tribal government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. solicitation of bids for the procurement of goods and services required.

c. disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services.*

a. *General.* Compensation for personal services includes all remuneration, paid currently or accured, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (Section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is reasonable for the services rendered; (2) follows an appointment made in accordance with State, local, or Indian tribal government laws and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b. below. Compensation for employees engaged in federally-assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State, local, or Indian tribal government. In cases where the kinds of employees required for the federally-assisted activities are not found in the other activities of the State, local, or Indian tribal government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and provided in accordance with generally accepted practice of the State, local, or Indian tribal government. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.*

a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant propgrams or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally-accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally-sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usuable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in Section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided prusuant to an approved leave system; and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State, local or Indian tribal policy, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State, local or Indian tribal government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to

carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities.*

a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program; (2) the expenditure is for agency membership; (3) the cost of the membership is reasonably related to the value of the services or benefits received; and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Costs for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development, which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations are not is unallowable except when less-than-first-class air accommodations reasonably available. Notwithstanding the provisions of paragraphs D.6. and 8., travel costs of officials covered by those paragraphs, when specifically related to grant programs, are allowable with the prior approval of a grantor agency.

C. Costs Allowable With Approval of Grantor Agency

1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately-owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency

a. *Rental cost.* The rental cost of space in a privately-owned building is allowable. Similar costs for publicly owned buildings newly occupied on or after October 1, 1980, are allowable where "rental rate" systems, or equivalent systems that adequately reflect actual costs, are employed. Such charges must be determined on the basis of actual cost (including depreciation based on the useful life of the building, interest paid or accrued, operation and maintenance, and other allowable costs). Where these costs are included in rental charges, they may not be charged elsewhere. No costs will be included for purchases or construction that were originally financed by the Federal Government.

b. *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Costs incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (Section C.3.) are allowable when specifically approved by the grantor agency.

d. *Depreciation and just allowances on publicly-owned buildings.* The costs are allowable as provided in Section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

3. *Captial expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold; (b) no longer available for use in a federally-sponsored program; or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as

Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly-acquired assets is allowable.

4. *Insurance and indemnification.*

a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification.* Includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d. above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Costs of professional services rendered by individuals or organizations not a part of the grantee department are allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. Unallowable Costs

1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainment.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

6. *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State, or the chief executive of a political subdivision, are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs by the chief executive and his staff is allowable. The allowable portion shall be determined by the Federal cognizant agency and the Indian government representative on a reasonable basis.

7. *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation and except as provided for in paragraph C.2.a of this Attachment.

8. *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

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Program Participants and Departmental Staff

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FOREWORD

This Handbook, reprinted from the Office of Management and Budget (OMB) Circular A-102, sets forth the uniform administrative requirements for grants-in-aid to state and local governments. Compliance with those requirements in the Circular which apply to the Community Development Block Grant (CDBG) Program are mandatory and may not be deviated therefrom without prior Headquarters approval, concurred in by the Office of Management and Budget.

Attachment P, Audit Requirements, of this Handbook should be used in conjunction with Guidelines for Financial Compliance Audits of Federally Assisted Programs published by the U.S. General Accounting Office, and Standards for Audit of Governmental Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States. Both publications are available by purchase from the Superintendent of Documents, United States Government Printing Office (USGPO), Washington, D.C., 20420. USGPO Stock Number for the former is 020-000-00181-0; for the latter, the Stock Number is 2000-00110.

Additional copies of this Handbook may be obtained in limited quantities from the appropriate HUD Area Office upon request.

Attachment B
Circular No. A-102

BONDING AND INSURANCE

1. This Attachment sets forth bonding and insurance requirements for grants. No other bonding and insurance requirements shall be imposed other than those normally required by the grantee.

2. Except as otherwise required by law, a grant that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the grantee to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal agency may accept the bonding policy and requirements of the grantee provided the Federal agency has made a determination that the Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractural documents as may be required within the time specifed.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

3. Where the Federal Government guarantees or insures the repayment of money borrowed by the grantee, the Federal agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interest of the Federal Government.

4. Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

ATTACHMENT C
Circular No. A-102

RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS

1. This attachment sets forth record retention requirements for grants. Federal grantor agencies shall not impose any record retention requirements upon grantees other than those described below.

2. Financial records, supporting documents, statistical records, and all other records pertinent to a grant shall be retained for a period of three years, with the following qualifications:

a. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

b. Records for nonexpendable property acquired with Federal funds shall be retained for 3 years after its final disposition.

c. When records are transferred to or maintained by the Federal sponsoring agency, the 3-year retention requirement is not applicable to the grantee.

3. The retention period starts from the date of the submission of the final expenditure report or, for grants that are renewed annually, from the date of the submission of the annual financial status report.

4. Grantees should be authorized by the Federal grantor agency, if they so desire, to substitute microfilm copies in lieu of original records.

5. The Federal grantor agency shall request transfer of certain records to its custody from grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, a Federal grantor agency may make arrangements with grantees to retain any records that are continuously needed for joint use.

6. The head of the Federal grantor agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of grantees and subgrantees to make audits, examinations, excerpts and transcripts.

7. Unless otherwise required by law, no Federal grantor agency shall place restrictions on grantees that will limit public access to the records of grantees that are pertinent to a grant except when the agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the grantor agency.

ATTACHMENT E
Circular No. A-102

PROGRAM INCOME

1. Federal grantor agencies shall apply the standards set forth in this Attachment in requiring grantees to account for program income related to projects financed in whole or in part with Federal grant funds. Program income means gross income earned by the grantee from grant-supported activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

2. Interest earned on advances of Federal funds shall be remitted to the Federal agency except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Public Law 90-577) and advances made to tribal organizations pursuant to section 102, 103, or 104 of the Indian Self Determination Act (Public Law 93-638).

3. Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with Attachment N to this Circular pertaining to Property Management.

4. Unless the grant agreement provides otherwise, grantees shall have no obligation to the Federal Government with respect to royalties received as a result of copyrights or patents produced under the grant or other agreement. (See paragraph 7, Attachment N.)

5. All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be:

a. Added to funds committed to the project by the grantor and grantee and be used to further eligible program objectives.

b. Used to finance the non-Federal share of the project when approved by the Federal Sponsoring agency; or

c. Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

6. Federal grantor agencies shall require the grantees to record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

ATTACHMENT G
Circular No. A-102

STANDARDS FOR GRANTEE FINANCIAL MANAGEMENT SYSTEMS

1. This Attachment prescribes standards for financial management systems of grant-supported activities of State, local, and federally recognized Indian tribal governments. Federal grantor agencies shall not impose additional standards on grantees unless specifically provided for in other Attachments to this Circular. However, grantor agencies are encouraged to make suggestions and assist the grantees in establishing or improving financial management systems when such assistance is needed or requested.

2. Grantee financial management systems shall provide for:

a. Accurate, current, and complete disclosure of the financial results of each grant program in accordance with reporting requirements set forth in Attachment H to this Circular. When a Federal grantor agency requires reporting on an accrual basis, the grantee shall not be required to establish an accrual accounting system but shall develop such accrual data on its reports on the basis of an analysis of the documentation on hand.

b. Records that identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to Federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

c. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

d. Comparison of actual outlays with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the grantor agency.

e. Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by

the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury as close as possible to the time of making the disbursements. Advances made by primary recipient organizations (those which receive payments directly from the Federal Government) to secondary recipients shall conform substantially to the same standards of timing and amount as apply to advances by Federal agencies to primary recipient organizations.

f. Procedures for determining reasonableness, allowability and allocability of costs in accordance with the provisions of Office of Management and Budget (OMB) Circular A-87.

g. Accounting records that are supported by source documentation.

h. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

3. Primary grantees shall require subgrantees to adopt the standards in paragraph 2, above, except for the requirement in subparagraph 2a, regarding reporting forms and frequencies prescribed in Attachment H to this Circular.

ATTACHMENT H
Circular No. A-102

FINANCIAL REPORTING REQUIREMENTS

1. This Attachment prescribes uniform reporting procedures for grantees to: summarize expenditures made and Federal funds unexpended for each award, report the status of Federal cash advanced, request advances and reimbursement when the letter-of-credit method is not used; and promulgates standard forms incident thereto. Grantees when obtaining financial information required by Federal agencies from subgrantees are not required to use the forms contained in this Attachment.

2. The following definitions apply for purposes of this Attachment:

a. Accrued expenditures. Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required such as annuities, insurance claims, and other benefit payments.

b. Accrued income. Accrued income is the sum of (1) earnings during a given period from (i) services performed by the grantee; and (ii) goods and other tangible property delivered to purchasers; and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

c. Federal funds authorized. Federal funds authorized are the total amount of Federal funds obligated by the Federal Government for use by the grantee. This amount may include any authorized carryover of unobligated funds from prior fiscal years when permitted by law or agency regulation.

d. In-kind contributions. In-kind contributions are defined in Attachment F to this Circular.

e. Obligations. Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

f. Outlays. Outlays or expenditures represent charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subgrantees. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees and other payees and other amounts becoming owed under programs for which no current services or performance are required such as annuities, insurance claims, and other benefit payments.

g. Program income. Program income is defined in Attachment E of this Circular. It may be reported on a cash or accrual basis, whichever is used for reporting outlays.

h. Unobligated balance. The unobligated balance is the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

i. Unliquidated obligations. For reports prepared on a cash basis, unliquidated obligations represent the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

3. Only the following forms will be authorized for obtaining financial information from grantees.

a. Financial Status Report (Exhibit 1).

(1) Each Federal agency shall require grantees to use the standardized Financial Status Report to report the status of funds for all nonconstruction projects or programs. The Federal agencies may, however, have the option of not requiring the Financial Status Report when the Request for Advance or Reimbursement (paragraph 4a) or Report of Federal Cash Transactions (paragraph 3b) is determined to provide adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion of the project

when the Request for Advance or Reimbursement form is used only for advances.

(2) The Federal agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system, but shall develop such accrual information through an analysis of the documentation on hand.

(3) The Federal agency shall determine the frequency of the Financial Status Report for each project or program considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually except as provided in subparagraph 3a(1) above. A final report shall be required at the completion of the grant.

(4) Federal agencies shall require grantees to submit the Financal Status Report (original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 days for annual and final reports. Extensions to reporting due dates may be granted upon request of the recipient.

b. Report of Federal Cash Transactions (Exhibit 2).

(1) When funds are advanced to grantees through letters of credit or with direct Treasury checks, the Federal agencies shall require each grantee to submit a Report of Federal Cash Transactions. The Federal agency shall use this report to assist them in monitoring advances to grantees and to obtain disbursement information for each agreement from the grantee. Grantees under the Regional Disbursing Office (RDO) system shall not be required to submit a Report of Federal Cash Transactions. For these grantees Federal agencies shall use information contained in the Request for Payment to monitor grantee cash balances and to get disbursement information.

(2) Federal agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(3) When practical and deemed necessary, the Federal agencies may require grantees to report in the "Remarks" section the amount of excess cash advances in the hands of subgrantees

and to provide short narrative explanations of actions taken by the grantees to reduce the excess balances.

(4) Grantees shall be required to submit not more than the original and two copies of the Report of Federal Cash Transactions 15 workings days following the end of each quarter. The Federal agencies may require a monthly report from those grantees receiving advances totaling $1 million or more per year.

(5) Federal agencies may waive the requirement for submission of the Report of Federal Cash Transactions when monthly advances do not exceed $10,000 per grantee, provided that such advances are monitored through other forms contained in this Attachment, or if, in the Federal agency's opinion, the grantee's accounting controls are adequate to minimize excessive Federal advances.

4. Except as noted below, only the following forms will be authorized for grantees in requesting advances and reimbursements.

a. Request for Advance or Reimbursement (Exhibit 3).

(1) Each Federal agency shall adopt the Request for Advance or Reimbursement as a standardized form for all nonconstruction programs when letters-of-credit or predetermined advance methods are not used. Federal agencies, however, have the option of using this form for construction programs in lieu of the Outlay Report and Request for Reimbursement for Construction Programs (subparagraph 4b).

(2) Grantees shall be authorized to submit requests for advances and reimbursements at least monthly when letters-of-credit are not used. Federal agencies shall not require the submission of more than the original and two copies of the Request for Advance or Reimbursement.

b. Outlay report and request for reimbursement for construction programs (Exhibit 4).

(1) Each Federal agency shall adopt the Outlay Report and Request for Reimbursement for Construction Programs as the standardized format to be used for requesting reimbursement for construction programs. The Federal agencies may, however, have the option of substituting the Request for Advance or Reimbursement Form (subparagraph 4a) when the Federal agencies

determine that it provides adequate information to meet their needs.

(2) Grantees shall be authorized to submit requests for reimbursement at least monthly when letters-of-credit are not used. Federal agencies shall not require more than the original and two copies of the Outlay Report and Request for Reimbursement for Construction Programs.

5. When the Federal agencies need additional information in using these forms or more frequent reports, the following shall be observed:

a. When additional information is needed to comply with legislative requirements, Federal agencies shall issue instructions to require grantees to submit such information under the "Remarks" section of the reports.

b. When a Federal agency has determined that a grantee's accounting system does not meet the standards for financial management contained in Attachment G to this Circular, additional pertinent information to further monitor grants and other agreements may be obtained upon written notice to the grantee until such time as the system is brought up to standard.

c. The Federal agency, in obtaining information as in paragraphs a and b above, must comply with reports clearance requirements of the Office of Management and Budget Circular No. A-40, as revised.

6. Federal agencies have the option of shading out any line item on any report that is unnecessary for decision-making purposes.

7. Federal agencies should accept the identical information from the grantees in machine usable format or computer printouts in lieu of prescribed formats.

8. Federal agencies may provide computer outputs to grantees when it will expedite or contribute to the accuracy of reporting.

9. The standard forms can be obtained from the General Services Administration.

FINANCIAL STATUS REPORT

(Follow instructions on the back)

1. FEDERAL AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH REPORT IS SUBMITTED		2. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER	OMB Approved No 30–R0180	PAGE OF PAGES	
3. RECIPIENT ORGANIZATION (Name and complete address, including ZIP code)	4. EMPLOYER IDENTIFICATION NUMBER	5. RECIPIENT ACCOUNT NUMBER OR IDENTIFYING NUMBER	6. FINAL REPORT ☐ YES ☐ NO	7. BASIS ☐ CASH ☐ ACCRUAL	
	8. PROJECT/GRANT PERIOD (See instructions) FROM (Month, day, year)	TO (Month, day, year)	9. PERIOD COVERED BY THIS REPORT FROM (Month, day, year)	TO (Month, day, year)	

10. STATUS OF FUNDS

PROGRAMS/FUNCTIONS/ACTIVITIES ▶	(a)	(b)	(c)	(d)	(e)	(f)	TOTAL (g)
a Net outlays previously reported	$	$	$	$	$	$	$
b Total outlays this report period							
c *Less:* Program income credits							
d Net outlays this report period (Line b minus line c)							
e Net outlays to date (Line a plus line d)							
f *Less:* Non-Federal share of outlays							
g Total Federal share of outlays (Line e minus line f)							
h Total unliquidated obligations							
i *Less:* Non-Federal share of unliquidated obligations shown on line h							
j Federal share of unliquidated obligations							
k Total Federal share of outlays and unliquidated obligations							
l Total cumulative amount of Federal funds authorized							
m Unobligated balance of Federal funds							

11 INDIRECT EXPENSE	a. TYPE OF RATE (Place "X" in appropriate box) ☐ PROVISIONAL ☐ PREDETERMINED ☐ FINAL ☐ FIXED			
	b. RATE	c. BASE	d. TOTAL AMOUNT	e. FEDERAL SHARE

12 REMARKS. Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation

13. CERTIFICATION

I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REPORT SUBMITTED
TYPED OR PRINTED NAME AND TITLE	TELEPHONE (Area code, number and extension)

269–101 EXHIBIT 1

STANDARD FORM 269 (7–76)
Prescribed by Office of Management and Budget
CIRCULARS NO A-102 AND A-110

3/82

6

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 3, 6, 7, 9, 10d, 10e, 10g, 10i, 10l, 11a, and 12 are self-explanatory. Specific instructions for other items are as follows.

Item	Entry
4	Enter the employer identification number assigned by the U.S. Internal Revenue Service or FICE (institution) code, if required by the Federal sponsoring agency.
5	This space is reserved for an account number or other identifying numbers that may be assigned by the recipient.
8	Enter the month, day, and year of the beginning and ending of this project period. For formula grants that are not awarded on a project basis, show the grant period.
10	The purpose of vertical columns (a) through (f) is to provide financial data for each program, function, and activity in the budget as approved by the Federal sponsoring agency. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the totals of all programs, functions or activities should be shown in column (g) of the first page. For agreements pertaining to several Catalog of Federal Domestic Assistance programs that do not require a further functional or activity classification breakdown, enter under columns (a) through (f) the title of the program. For grants or other assistance agreements containing multiple programs where one or more programs require a further breakdown by function or activity, use a separate form for each program showing the applicable functions or activities in the separate columns. For grants or other assistance agreements containing several functions or activities which are funded from several programs, prepare a separate form for each activity or function when requested by the Federal sponsoring agency.
10a	Enter the net outlay. This amount should be the same as the amount reported in Line 10e of the last report. If there has been an adjustment to the amount shown previously, please attach explanation. Show zero if this is the initial report.
10b	Enter the total gross program outlays (less rebates, refunds, and other discounts) for this report period, including disbursements of cash realized as program income. For reports that are prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contractors, subgrantees, and other payees.
10c	Enter the amount of all program income realized in this period that is required by the terms and conditions of the Federal award to be deducted from total project costs. For reports prepared on a cash basis, enter the amount of cash income received during the reporting period. For reports prepared on an accrual basis, enter the amount of income earned since the beginning of the reporting period. When the terms or conditions allow program income to be added to the total award, explain in remarks, the source, amount and disposition of the income.
10f	Enter amount pertaining to the non-Federal share of program outlays included in the amount on line e.
10h	Enter total amount of unliquidated obligations for this project or program, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations are: Cash basis—obligations incurred but not paid; Accrued expenditure basis—obligations incurred but for which an outlay has not been recorded. Do not include any amounts that have been included on lines a through g. On the final report, line h should have a zero balance.
10j	Enter the Federal share of unliquidated obligations shown on line h. The amount shown on this line should be the difference between the amounts on lines h and i.
10k	Enter the sum of the amounts shown on lines g and j. If the report is final the report should not contain any unliquidated obligations.
10m	Enter the unobligated balance of Federal funds. This amount should be the difference between lines k and l.
11b	Enter rate in effect during the reporting period.
11c	Enter amount of the base to which the rate was applied.
11d	Enter total amount of indirect cost charged during the report period.
11e	Enter amount of the Federal share charged during the report period. If more than one rate was applied during the project period, include a separate schedule showing bases against which the indirect cost rates were applied, the respective indirect rates the month, day, and year the indirect rates were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

FEDERAL CASH TRANSACTIONS REPORT

(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.)

Approved by Office of Management and Budget, No 80-R0182

1. Federal sponsoring agency and organizational element to which this report is submitted

2. RECIPIENT ORGANIZATION

Name

Number and Street

City, State and ZIP Code

3. FEDERAL EMPLOYER IDENTIFICATION NO.

4. Federal grant or other identification number

5. Recipient's account number or identifying number

6. Letter of credit number

7. Last payment voucher number

Give total number for this period

8. Payment Vouchers credited to your account

9. Treasury checks received (whether or not deposited)

10. PERIOD COVERED BY THIS REPORT

FROM (month, day, year)

TO (month, day, year)

11. STATUS OF FEDERAL CASH *(See specific instructions on the back)*

a. Cash on hand beginning of reporting period	$
b. Letter of credit withdrawals	
c. Treasury check payments	
d. Total receipts (*Sum of lines b and c*)	
e. Total cash available (*Sum of lines a and d*)	
f. Gross disbursements	
g. Federal share of program income	
h. Net disbursements (*Line f minus line g*)	
i. Adjustments of prior periods	
j. Cash on hand end of period	$

12. THE AMOUNT SHOWN ON LINE 11J. ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING *Days*

13. OTHER INFORMATION

a. Interest income	$
b. Advances to subgrantees or subcontractors	$

14. REMARKS (*Attach additional sheets of plain paper, if more space is required*)

15. CERTIFICATION

I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purpose and conditions of the grant or agreement

AUTHORIZED CERTIFYING OFFICIAL

SIGNATURE

DATE REPORT SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE (*Area Code*) (*Number*) (*Extension*)

THIS SPACE FOR AGENCY USE

272-101 EXHIBIT 2

STANDARD FORM 272 (7-76)
Prescribed by Office of Management and Budget
CIRCULARS NO A-102 AND A-110

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item	*Entry*
3	Enter employer identification number assigned by the U.S. Internal Revenue Service or the FICE (institution) code. If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272–A, Report of Federal Cash Transactions—Continued; otherwise:
4	Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.
5	This space reserved for an account number or other identifying number that may be assigned by the recipient.
6	Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.
7	Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.
11a	Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.
11b	Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.
11c	Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.
11f	Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the employee's share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.
11g	Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.
11i	Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks." Use plain sheets of paper if additional space is required.
11j	Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line e, less line h, plus or minus line i).
12	Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash reqirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.
13a	Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks." Do not report interest earned on advances to States.
13b	Enter amount of advance to secondary recipients included in item 11h.
14	In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.

STANDARD FORM 272 (BACK) (7-76)

FEDERAL CASH TRANSACTIONS REPORT
CONTINUATION

(This form is completed and attached to Standard Form 272 only when reporting more than one grant or assistance agreement.)

Approved by Office of Management and Budget, No. 80–R0182

1. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

2. RECIPIENT ORGANIZATION *(Give name only as shown in item 8, SF 272)*

3. PERIOD COVERED BY THIS REPORT *(As shown on SF 272)*

FROM *(Month, day, year)* | TO *(Month, day, year)*

4. List information below for each grant or other agreement covered by this report. Use additional forms if more space is required.

FEDERAL GRANT OR OTHER IDENTIFICATION *(Show a subdivision by other identifying numbers if required by the Federal Sponsoring Agency)*	RECIPIENT ACCOUNT NUMBER OR OTHER IDENTIFYING NUMBER	FEDERAL SHARE OF NET DISBURSEMENTS	
		NET DISBURSEMENTS *(Gross disbursements less program income received)* FOR REPORTING PERIOD	CUMULATIVE NET DISBURSEMENTS
(a)	(b)	(c)	(d)
		$	$
5. TOTALS *(Should correspond with amounts shown on SF 272 as follows: column (c) the same as line 11h, column (d) the sum of lines 11h and 11i, of this SF 272 and cumulative disbursements shown on last report. Attach explanation of any differences.)*		$	$

272-101

STANDARD FORM 272–A (7-76)
Prescribed by Office of Management and Budget
CIRCULARS NO. A-102 AND A-110

REQUEST FOR ADVANCE OR REIMBURSEMENT

(See instructions on back)

Approved by Office of Management and Budget, No 80-R0183

PAGE OF PAGES

1. TYPE OF PAYMENT REQUESTED
a. "X" one, or both items
☐ ADVANCE ☐ REIMBURSEMENT
b. "X" the applicable box
☐ FINAL ☐ PARTIAL

2. BASIS OF REQUEST
☐ CASH ☐ ACCRUAL

3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY

5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST

6. EMPLOYER IDENTIFICATION NUMBER

7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER

8. PERIOD COVERED BY THIS REQUEST
FROM (month, day, year) TO (month, day, year)

9. RECIPIENT ORGANIZATION

Name

Number and Street

City, State and ZIP Code

10a. PAYEE (*Where check is to be sent to different than item 9*)

Name

Number and Street

and ZIP Code

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED

PROGRAMS/FUNCTIONS/ACTIVITIES ▶	(a)	(b)	(c)	TOTAL
a. Total program outlays to date (*As of date*)	$	$	$	$
b. *Less*: Cumulative program income				
c. Net program outlays (*Line a minus line b*)				
d. Estimated net cash outlays for advance period				
e. Total (*Sum of lines c & d*)				
f. Non-Federal share of amount on line e				
g. Federal share of amount on line e				
h. Federal payments previously requested				
i. Federal share now requested (*Line g minus line h*)				
j. Advances required by month, when requested by Federal grantor agency for use in making pre-scheduled advances — 1st month				
2nd month				
3rd month				

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY

a. Estimated Federal cash outlays that will be made during period covered by the advance	$
b. *Less*: Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (*Line a minus line b*)	$

13. CERTIFICATION

I certify that to the best of my knowledge and belief the data above are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL — DATE REQUEST SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE — Area Code — Number — Extension

This space for agency use

270-101 EXHIBIT 3

STANDARD FORM 270 (7-76)
Prescribed by Office of Management and Budget
CIRCULARS NO A-102 AND A-110

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

Item	*Entry*
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
8	Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.
Note:	The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.
11	The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
11a	Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
13	Complete the certification before submitting this request.

STANDARD FORM 270 BACK (7-76)

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS

(See instructions on back)

Approved by Office of Management and Budget, No 80–R0181

PAGE OF PAGES

1. TYPE OF REQUEST ☐ FINAL ☐ PARTIAL
2. BASIS OF REQUEST ☐ CASH ☐ ACCRUAL
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED
4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY
5. PARTIAL PAYMENT REQUEST NO.
6. EMPLOYER IDENTIFICATION NUMBER
7. RECIPIENT ACCOUNT OR OTHER IDENTIFYING NUMBER
PERIOD COVERED BY THIS REPORT
FROM (*Month, day, year*)
TO (*Month, day, year*)
8. RECIPIENT ORGANIZATION

Name

No. and Street

City, State and ZIP Code

10. PAYEE (*Where check should be sent if different than item 8*)

Name

No. and Street

City, State and ZIP Code

11. STATUS OF FUNDS

CLASSIFICATION	PROGRAMS—FUNCTIONS—ACTIVITIES (a)	(b)	(c)	TOTAL
a. Administrative expense	$	$	$	$
b. Preliminary expense				
c. Land, structures, right-of-way				
d. Architectural engineering basic fees				
e. Other architectural engineering fees				
f. Project inspection fees				
g. Land development				
h. Relocation expense				
i. Relocation payments to individuals and businesses				
j. Demolition and removal				
k. Construction and project improvement cost				
l. Equipment				
m. Miscellaneous cost				
n. Total cumulative to date (sum of lines a thru m)				
o. Deductions for program income				
p. Net cumulative to date (Line n minus line o)				
q. Federal share to date				
r. Rehabilitation grants (100% reimbursement)				
s. Total Federal share (sum of lines q and r)				
t. Federal payments previously requested				
u. Amount requested for reimbursement	$	$	$	$
v. Percentage of physical completion of project	%	%	%	%

12. CERTIFICATION

I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.

a. RECIPIENT	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REPORT SUBMITTED
	TYPED OR PRINTED NAME AND TITLE	TELEPHONE (*Area code, number and extension*)
b. Representative certifying to line 11v.	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE SIGNED
	TYPED OR PRINTED NAME AND TITLE	TELEPHONE (*Area code number and extension*)

271–101 *EXHIBIT 4*

STANDARD FORM 271 (7–76)
Prescribed by Office of Management and Budget
CIRCULARS NO A-102 AND A-110

INSTRUCTIONS

Please type or print legibly. Items 3, 4, 5, 8, 9, 10, 11a, and 11v are self-explanatory; specific instructions for other items are as follows:

Item	Entry
1	Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project.
2	Show whether amounts are computed on an accrued expenditure or cash disbursement basis.
6	Enter the employer identification number assigned by the U S. Internal Revenue Service [or FICE (institution) code if requested by the Federal agency].
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
11	The purpose of vertical columns (a) through (c) is to provide space for separate cost breakdowns when a large project has been planned and budgeted by program, function or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page. All amounts are reported on a cumulative basis.
11a	Enter amounts expended for such items as travel, legal fees, rental, of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.
11b	Enter amounts pertaining to the work of locating and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.
11c	Enter all amounts directly associated with the acquisition of land, existing structures and related right-of-way.
11d	Enter basic fees for services of architectural engineers.
11e	Enter other architectural engineering services. Do not include any amounts shown on line d.
11f	Enter inspection and audit fees of construction and related programs.
11g	Enter all amounts associated with the development of land where the primary purpose of the grant is land improvement. The amount pertaining to land development normally associated with major construction should be excluded from this category and entered on line k.
11h	Enter the dollar amounts used to provide relocation advisory assistance and net costs of replacement housing (last resort). Do not include amounts needed for relocation administrative expenses; these amounts should be included in amounts shown on line e.
11i	Enter the amount of relocation payments made by the recipient to displaced persons, farms, business concerns, and nonprofit organizations.
11j	Enter gross salaries and wages of employees of the recipient and payments to third party contractors directly engaged in performing demolition or removal of structures from developed land. All proceeds from the sale of salvage or the removal of structures should be credited to this account; thereby reflecting net amounts if required by the Federal agency.
11k	Enter those amounts associated with the actual construction of, addition to, or restoration of a facility. Also, include in this category, the amounts for project improvements such as sewers, streets, landscaping, and lighting.
11l	Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.
11m	Enter the amounts for all items not specifically mentioned above.
11n	Enter the total cumulative amount to date which should be the sum of lines a through m.
11o	Enter the total amount of program income applied to the grant or contract agreement except income included on line j. Identify on a separate sheet of paper the sources and types of the income.
11p	Enter the net cumulative amount to date which should be the amount shown on line n minus the amount on line o.
11q	Enter the Federal share of the amount shown on line p.
11r	Enter the amount of rehabilitation grant payments made to individuals when program legislation provides 100 percent payment by the Federal agency.
11t	Enter the total amount of Federal payments previously requested. If this form is used for requesting reimbursement.
11u	Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines s and t. If different, explain on a separate sheet.
12a	To be completed by the recipient official who is responsible for the operation of the program. The date should be the actual date the form is submitted to the Federal agency.
12b	To be completed by the official representative who is certifying to the percent of project completion as provided for in the terms of the grant or agreement.

STANDARD FORM 271 (7-76)

ATTACHMENT I
Circular No. A-102

MONITORING AND REPORTING OF PROGRAM PERFORMANCE

1. This Attachment sets forth the procedures for monitoring and reporting program performance under Federal grants. These procedures are designed to place greater reliance on grantees to manage the day-to-day operations of the grant-supported activities.

2. Grantees shall constantly monitor the performance under grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application or award document.

3. Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved as prescribed by the Federal agency:

a. A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

b. Reasons why established goals were not met.

c. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

4. Except as provided in a and b below, and in subparagraph 3a(1), of Attachment H, grantees shall submit the performance or technical reports to Federal agencies and the Financial Status Reports covering the same period in the frequency established by Attachment H of this Circular and, where appropriate, a final technical or performance report after completion of the project on a date specified by the Federal agency. The Federal agency shall prescribe the frequency with which the performance reports will be submitted with the request for advance or reimbursement when that form is used in lieu of the Financial Status Report. Except as provided for in paragraph 5 below, performance reports shall not be required more frequently than quarterly or less frequently than annually. Federal agencies may waive the

requirement for grantees to submit performance reports with the financial reports under the following circumstances:

a. When the grantee is required to submit a performance report with a continuation or renewal application.

b. When the Federal agency determines that on-site technical inspections and certified completion data will be sufficient to evaluate construction projects.

c. When the Federal agency requests annual financial reports on a fiscal year basis but it is necessary to get annual progress reports on a calendar year basis.

5. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the grantee shall inform the grantor agency as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

b. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

6. If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in Attachment K to this Circular, the grantee shall submit a request for budget revision.

7. The grantor agency shall make site visits as frequently as practicable to:

a. Review program accomplishments and management control systems.

b. Provide such technical assistance as may be required.

8. Federal agencies shall submit proposed technical and performance reports to the Office of Management and Budget for

approval in accordance with the report clearance requirements of OMB Circular No. A-40 as revised.

ATTACHMENT J
Circular No. A-102

GRANT PAYMENT REQUIREMENTS

1. This Attachment establishes required methods of making payments to grantees. These methods will minimize the time elapsing between the disbursement by a grantee and the transfer of funds from the United States Treasury to the grantee, whether such disbursement occurs prior to or subsequent to the transfer of funds.

2. Grant payments are made to grantees through a letter of credit, an advance by Treasury check, or a reimbursement by Treasury check. The following definitions apply for the purpose of this Attachment:

a. Letter of credit. A letter of credit is an instrument certified by an authorized official of a grantor agency which authorizes a grantee to draw funds needed for immediate disbursement in accordance with the provisions of Treasury Circular No. 1075.

b. Advance by Treasury check. An advance by Treasury check is a payment made by a Treasury check to a grantee upon its request before cash outlays are made by the recipient or through the use of predetermined payment schedules before payments are made by the grantee.

c. Reimbursement by Treasury check. A reimbursement by Treasury check is a payment made to a grantee with a Treasury check upon request for reimbursement from the grantee.

3. Except for construction grants for which optional payment methods are authorized, the letter-of-credit funding method shall be used by grantor agencies where all of the following conditions exist:

a. When there is or will be a continuing relationship between a grantee and a Federal grantor agency for at least a 12-month period and the total amount of advances to be received within that period from the grantor agency is $120,000 or more.

b. When the grantee has established or demonstrated to the grantor the willingness and ability to establish procedures that

will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

c. When the grantee's financial management system meets the standards for fund control and accountability prescribed in Attachment G to this Circular, "Standards for Grantee Financial Management Systems."

4. The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraph 3 above except those in 3.a.

5. The reimbursement by Treasury check method shall be the preferred method when the grantee does not meet the requirements specified in either or both of paragraphs 3.b. and 3.c. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and when the Federal grant assistance constitutes a minor portion of the program. When the reimbursement method is used the Federal agencies shall make payment within thirty days after receipt of the billing unless the billing is improper. With respect to payments to contractors, recipients shall not be reimbursed for amounts that are to be withheld to assure satisfactory completion of the work. These amounts will be paid when recipients make final payment including amounts withheld.

6. When the letter-of-credit procedure is used, the grantee shall be issued one consolidated letter-of-credit whenever possible to cover anticipated cash needs for all grants awarded by the Federal agency. Likewise, to the extent possible, when the advance by Treasury check method is used, advances should be consolidated (pooled) for all grants made by the Federal agency to the grantee.

7. Unless otherwise required by law, grantor agencies shall not withhold payments for proper charges made by State and local governments at any time during the grant period unless (a) a grantee has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements, or (b) the grantee is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States. Under such conditions, the grantor may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred

after a specified date until the conditions are corrected or the indebtedness to the Federal government is liquidated.

8. Attachment H of this Circular, "Financial Reporting," provides for the procedures and forms for requesting advances or reimbursements.

ATTACHMENT L
Circular No. A-102

GRANT CLOSEOUT PROCEDURES

1. This Attachment prescribes uniform closeout procedures for grantees.

2. The following definitions shall apply for the purpose of this Attachment:

a. Grant closeout. The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

b. Date of completion. The date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

c. Termination. The termination of a grant means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

d. Suspension. The suspension of a grant is an action by a Federal grantor agency which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the grantor agency.

e. Disallowed costs. Disallowed costs are those charges to a grant which the grantor agency or its representative determines to be unallowable. (See Federal Management Circular No. 74-4.)

3. All Federal grantor agencies shall establish grant closeout procedures which include the following requirements:

a. Upon request, the Federal grantor agency shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

b. The grantee shall immediately refund to the grantor agency any balance of unobligated (unencumbered) cash

advanced to the grantee that is not authorized to be retained by the grantee for use on other grants.

c. The grantor agency shall obtain from the grantee within 90 days after the date of completion of the grant all financial, performance, and other reports required as a condition of the grant. The agency may grant extensions when requested by the grantee.

d. When authorized by the grant the grantor agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

e. The grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of Attachment N to this Circular.

f. In the event a final audit has not been performed prior to the closeout of the grant, the grantor agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

4. All Federal grantor agencies shall provide procedures to be followed when a grantee has failed to comply with the grant award stipulations, standards, or conditions. When that occurs, the grantor agency may, on reasonable notice to the grantee, suspend the grant, and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with paragraph 5.a. The grantor agency shall allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of Federal Management Circular No. 74-4.

5. Subject to the provisions of paragraph 5 of the basic Circular, of which this Attachment is a part, all Federal grantor agencies shall provide for the systematic settlement of terminated grants including the following:

a. Termination for cause. The grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the

grant. The grantor agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to grantees or recoveries by the grantor agencies under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

b. Termination for convenience. The grantor agency or grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Federal agency shall allow full credit to the grantee for the Federal share of the noncancellable obligations, properly incurred by the grantee prior to termination.

ATTACHMENT N
Circular No. A-102

PROPERTY MANAGEMENT STANDARDS

1. This Attachment prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds or whose cost was charged to a project supported by a Federal grant. Federal grantor agencies shall require grantees to observe these standards under grants from the Federal Government and shall not impose additional requirements unless specifically required by Federal law. The grantees shall be authorized to use their own property management standards and procedures as long as the provisions of this Attachment are included.

2. The following definitions apply for the purpose of this Attachment:

a. Real property. Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

b. Personal property. Personal property of any kind except real property. It may be tangible -- having physical existence, or intangible -- having no physical existence, such as patents, inventions, and copyrights.

c. Nonexpendable personal property. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

d. Expendable personal property. Expendable personal property refers to all tangible personal property other than nonexpendable property.

e. Excess property. Excess property means property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs or discharge of its responsibilities.

f. Acquisition cost of purchased nonexpendable personal property. Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

g. Exempt property. Exempt property means tangible personnal property acquired in whole or inpart with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in subparagraph 6a below. Such unconditional vesting of title will be pursuant to any Federal legislation that provides the Federal sponsoring agency with adequate authority.

3. Real property. Each Federal grantor agency shall prescribe requirements for grantees concerning the use and disposition of real property funded partly or wholly by the Federal Government. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:

a. Title to real property shall vest in the recipient subject to the condition that the grantee shall use the real property for the authorized purpose of the original grant as long as needed.

b. The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

c. When the real property is no longer needed as provided in a and b above, the grantee shall request disposition instructions from the Federal agency or its successor Federal agency. The Federal agency shall observe the following rules in the disposition instructions:

(1) The grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by

applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(2) The grantee may be directed to sell the property under guidelines provided by the Federal agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

4. Federally-owned nonexpendable personal property. Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal agency. Upon completion of the agreement or when the property is no longer needed, the grantee shall report the property to the Federal agency for further agency utilization.

If the Federal agency has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate disposition instructions will be issued to the recipient after completion of the Federal agency review.

5. Exempt property. When statutory authority exists title to nonexpendable personal property acquired with project funds shall be vested in the recipient upon acquisition unless it is determined that to do so is not in the furtherance of the objectives of the Federal sponsoring agency. When title is vested in the recipient the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition except as provided in 6a below.

6. Other nonexpendable property. When other nonexpendable tangible property is acquired by a grantee with project funds

title shall not be taken by the Federal Government but shall vest in the grantee subject to the following conditions:

a. Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, the Federal agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(1) The property shall be appropriately identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal agency shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal agency fails to issue disposition instructions within the 120 calendar-day period, the grantee shall apply the standards of subparagraph 6b and 6c as appropriate.

(3) When the Federal agency exercises its right to take title, the personal property shall be subject to the provisions for federally-owned nonexpendable property discussed in paragraph 4, above.

(4) When title is transferred either to the Federal Government or to a third party, the provisions of subparagraph 6c(2)(b) should be followed.

b. Use of other tangible nonexpendable property for which the grantee has title.

(1) The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:

(a) Activities sponsored by the same Federal agency.

(b) Activities sponsored by other Federal agencies.

(2) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal agency that financed the property; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal agency. User charges should be considered if appropriate.

c. Disposition of other nonexpendable property. When the grantee no longer needs the property as provided in 6b above, the property may be used for other activities in accordance with the following standards:

(1) Nonexpendable property with a unit acquisition cost of less than $1,000. The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The grantee may retain the property for other uses provided that compensation is made to the original Federal agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the original grantor agency.

The Federal agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The Federal agency shall issue instructions to the grantee no later than 120 days after the grantee request and the following procedures shall govern:

(a) If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse the Federal agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(b) If the grantee is instructed to ship the property elsewhere the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(c) If the grantee is instructed to otherwise dispose of the property, the grantee shall be reimbursed by the Federal agency for such costs incurred in its disposition.

d. Property management standards for nonexpendable property. The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(a) A description of the property.

(b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(c) Source of the property including grant or other agreement number.

(d) Whether title vests in the grantee or the Federal Government.

(e) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(f) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for

which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(g) Location, use and condition of the property and the date the information was reported.

(h) Unit acquisition cost.

(i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a grantee compensates the Federal agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee shall promptly notify the Federal agency.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

7. Expendable personal property. Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use on nonfederally sponsored activities, or

sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

8. Intangible property.

a. Inventions and patents. If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal Government, such fact shall be promptly and fully reported to the Federal agency. Unless there is a prior agreement between the grantee and the Federal agency on disposition of such items, the Federal agency shall determine whether protection on the invention or discovery shall be sought. The Federal agency will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administrated in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

b. Copyrights. Except as otherwise provided in the terms and conditions of the agreement the author or the grantee organization is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Federal agreement, but the Federal agency shall reserve a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

9. Excess personal property. When title to excess property is vested in grantees such property shall be accounted for and disposed of in accordance with paragraphs 6c and 6d of this attachment.

ATTACHMENT O
Circular No. A-102

PROCUREMENT STANDARDS

1. Applicability

a. This Attachment establishes standards and guidelines for the procurement of supplies, equipment, construction and services for Federal assistance programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and executive orders.

b. No additional procurement requirements or subordinate regulations shall be imposed upon grantees by executive agencies unless specifically required by Federal law or executive orders or authorized by the Administrator for Federal Procurement Policy. This prohibition is not applicable to payment conditions issued in accordance with Treasury Circular 1075, individual grantee requirements pursuant to Section 10 of the basic circular or the provisions of this or other OMB circulars.

c. Provisions of current subordinate requirments not conforming to this Attachment shall be rescinded by grantor agencies unless approved by the Office of Federal Procurement Policy (OFPP).

2. Grantee/Grantor Responsibility

a. These standards do not relieve the grantee of any contractual responsibilities under its contracts. The grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered in support of a grant. These include but are not limited to source evaluation, protests, disputes, and claims. Executive agencies shall not substitute their judgment for that of the grantee unless the matter is primarily a Federal concern. Violations of law are to be referred to the local, State, or Federal authority having proper jurisdiction.

b. Grantees shall use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistance Programs

conform to the standards set forth in this Attachment and applicable Federal law.

3. Grantee Procurement Improvement

Executive agencies awarding Federal grants or other assistance which require or allow for procurement by the recipients are encouraged to assist recipients in improving their procurement capabilities by providng them with technical assistance training, publications, and other aid.

4. Procurement System Reviews

a. Executive agencies are encouraged to perform reviews of their grantees' procurement systems if a continuing relationship with the grantee is anticipated or a substantial amount of the Federal assistance is to be used for procurement and review of individual contracts is anticipated. The purpose of the review shall be to determine: (1) whether a grantee's procurement system meets the standards prescribed by this Attachment or other criteria acceptable to the OFPP, such provisions of the Model Procurement Code for State and local government; and (2) whether the grantee's procurement system should be certified by the reviewing agency. Such a review will also give an agency an opportunity to give technical assistance to a grantee to remedy its procurement system if it does not fully comply. In addition, such a review may provide a basis for deciding whether the grantee's contracts and related procurement documents should be subject to the grantor's prior approval, as provided by Section 6.

b. In conducting procurement system review, grantor agencies will evaluate a grantee's procurement system in terms of whether it complies with the standards prescribed by this Attachment and represents a fair, efficient and effective procurement system. To the maximum extent feasible, reviewers will rely upon State or local evaluations and analyses performed by agencies or organizations independent of the grantee contracting activity.

c. When a Federal grantor agency completes a procurement review, it shall furnish a report to the grantee, with a copy to OFPP.

d. All agencies should normally rely upon the resultant findings or certification for a period of 24 months before another review is performed.

e. Reviews shall be conducted in accordance with standards and guidelines approved or issued by OFPP.

f. The reviews authorized by Section 6 are waived if a grantee's procurement system is certified.

5. Protest Procedures

a. Grantor agencies may develop an administrative procedure to handle complaints or protests regarding grantee contractor selection actions. The procedure shall be limited as follows:

a. No protest shall be accepted by the grantor agency until all administrative remedies at the grantee level have been exhausted.

b. Review is limited to:

(i) Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

(ii) Violations of grantee's protest procedures or failure to review a complaint or protest.

6. Grantor Review of Proposed Contracts

Federal grantor pre-award review and approval of the grantee's proposed contracts and related procurement documents, such as requests for proposal and invitations for bids, is permitted only under the following circumstances:

a. The procurement is expected to exceed $10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

b. The procurement expected to exceed $10,000 specifies a "brand name" product; or

c. The grantee's procurement procedures or operation fails to comply with one or more significant aspects of this Attachment. The grantor agency shall notify the grantee in writing, with a copy of such notification to the OFPP.

7. Code of Conduct

Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

a. The employee, officer or agent;

b. Any member of his immediate family;

c. His or her partner; or

d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

8. Procurement Procedures

The grantee shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by grantee officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or breaking out to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

9. Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms

a. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists.

(2) Assuring that small and minority businesses are solicited whenever they are potential sources.

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

b. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.

c. Grantees are encouraged to procure goods and services from labor surplus areas.

d. Grantor agencies may impose additional regulations and requirements in the foregoing areas only to the extent specifically mandated by statute or presidential direction.

10. Selection procedures

a. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and

free competition consistent with this Attachment. Procurement procedures shall not restrict or eliminate competition. Example of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) noncompetitive practices between firms; (3) organizational conflicts of interest; and (4) unnecessary experience and bonding requirments.

b. The grantee shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation shall:

(a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

(b) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

11. Method Procurement

Procurement under grants shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) competitive sealed bids (formal advertising); (c) competitive negotiation; (d) noncompetitive negotiation.

a. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than $10,000. Grantees shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

b. In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

(a) A complete, adequate and realistic specification or purchase description is available.

(b) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.

(c) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(2) If formal advertising is used for a procurement under a grant the following requirements shall apply:

(a) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(b) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(c) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(d) A firm-fix-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(e) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

c. In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(2) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(3) The grantee shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(4) Award may be made to the responsible offeror whose proposal will be most adavantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(5) Grantees may utilize competitive negotiation procedures for procurement of architectural/engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

d. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(1) The item is available only from a single source;

(2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(3) The Federal grantor agency authorizes noncompetitive negotiation; or

(4) After soliciation of a number of sources, competition is determined inadequate.

e. Additional innovative procurement methods may be used by grantees with the approval of the grantor agency. A copy of such approval shall be sent to the OFPP.

12. Contract Pricing

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

13. Grantee Procurement Records

Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall

include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

14. Contract Provision

In addition to provisions defining a sound and complete procurement contract, any recipient of Federal grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal law or the grantor agency.

a. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

b. All contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. All contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

d. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

e. When required by the Federal grant program legislation, all construction contracts in excess of $2,000 awarded by grantees and subgrantees shall include a provision for compliance

with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

f. Where applicable, all contracts awarded by grantees and subgrantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

g. The contract shall include notice of grantor agency requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.

h. All negotiated contracts (except those awarded by small purchase procedures) awarded by grantees shall include a

provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

i. Contracts, subcontracts, and subgrants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

j. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Grantor agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

15. Contract Administration

Grantees shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

CIRCULAR A-102
ATTACHMENT P

AUDIT REQUIREMENTS

1. This Attachment establishes audit requirements for State and local governments, and Indian tribal governments that receive Federal assistance. It provides for independent audits of financial operations, including compliance with certain provisions of Federal law and regulation. The requirements are established to ensure that audits are made on an organization-wide basis, rather than on a grant-by-grant basis. Such audits are to determine whether (a) financial operations are conducted properly, (b) the financial statements are presented fairly, (c) the organization has complied with laws and regulations affecting the expenditure of Federal funds, (d) internal procedures have been established to meet the objectives of federally assisted programs, and (e) financial reports to the Federal Government contain accurate and reliable information. Except where specifically required by law, no additional requirements for audit will be imposed unless approved by the Office of Management and Budget.

2. Definitions.

"Cognizant agency" means the Federal agency that is assigned audit responsibility for a particular recipient organization by the Office of Management and Budget.

"Recipient organization" means a State department, a local government, an Indian tribal government, or a subdivision of such entities, that receives Federal assistance. It does not include State and local institutions of higher education or hospitals, which are covered by Circular A-110.

3. State and local governments and Indian tribal governments shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth below. Where contracts are awarded for audit services, the contracts shall include a reference to this Attachment.

4. The provisions of this Attachment do not limit the authority of Federal agencies to make audits of recipient organizations.

However, if independent audits arranged for by recipients meet the requirements prescribed below, all Federal agencies shall rely on them, and any additional audit work shall build upon the work already done.

5. Audits shall be made in accordance with the General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Programs, any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

6. Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations. These examinations are to determine whether:

a. There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities.

b. The financial statements are presented fairly in accordance with generally accepted accounting principles.

c. The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of this Circular.

d. Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

7. In order to accomplish the purposes set forth above, a representative number of charges to Federal awards shall be tested. The test shall be representative of (1) the universe of Federal awards received, and (2) all costs categories that materially affect the award. The test is to determine whether the charges:

a. Are necessary and reasonable for the proper administration of the program.

b. Conform to any limitations or exclusions in the award.

c. Were given consistent accounting treatment and applied uniformly to both federally assisted and other activities of the recipient.

d. Were net of applicable credits.

e. Did not include costs properly chargeable to other federally assisted programs.

f. Were properly recorded (i.e., correct amount, date) and supported by source documentation.

g. Were approved in advance, if subject to prior approval in accordance with OMB Circular A-87.

h. Were incurred in accordance with competitive purchasing procedures if covered by Attachment O of this Circular.

i. Were allocated equitably to benefiting activities, including non-Federal activities.

8. Audits usually will be made annually, but not less frequently than every two years.

9. If the auditor becomes aware of irregularities in the recipient organization, the auditor shall promptly notify the cognizant agency and recipient management officials above the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

10. The audit report shall include:

a. Financial statements, including footnotes, of the recipient organization.

b. The auditors' comments on the financial statements which should:

(1) Identify the statements examined, and the period covered.

(2) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.

(3) State that the audit was done in accordance with the standards in paragraph 5.

(4) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

c. The auditors' comments on compliance and internal control should:

(1) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(2) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports.

(3) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

d. Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies.

e. Comments on corrective action taken or planned by the recipient.

11. Work papers and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

12. The Office of Management and Budget will work with Federal agencies and State and local governments to assure that recipient audits are made in accordance with the standards set forth in paragraph 5.

13. The Office of Management and Budget will designate cognizant agencies for major recipient organizations.

14. The cognizant agency shall have the following responsibilities:

a. Obtain or make quality assessment reviews of the work of non-Federal audit organizations, and provide the results to other interested audit agencies. (If a non-Federal audit organization is responsible for audits of recipients that have different cognizant audit agencies, a single quality assessment review should be arranged.)

b. Assure that all audit reports of recipients that affect federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

c. Whenever significant inadequacies in an audit are disclosed, the recipient organization will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient organization and Federal awarding agencies of the facts and its recommendation. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

d. Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of this Attachment.

e. Provide technical advice and act as a liaison between Federal agencies, independent auditors, and recipient organizations.

f. Maintain a followup system on audit findings and investigative matters to assure that audit findings are resolved.

g. Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.

15. Recipients shall require subrecipients that are State and local governments or Indian tribal governments to adopt the requirements in paragraph 1 through 11 above. The recipient shall ensure that the subrecipient audit reports are received as required, and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for these reports described in paragraph 14.

16. Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded with Federal funds. Grantees of Federal funds shall take the following affirmative action to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals as defined in P.L. 95-507 are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available, and arrange time frames for the audit so as to encourage and facilitate participation by small or disadvantaged audit firms.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small or disadvantaged firms.

d. Encourage contracting with small or disadvantaged audit firms which have traditionally audited government programs, and in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small or disadvantaged audit firms as described in paragraph a when a contract is too large for an individual small or disadvantaged audit firm.

f. Use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the Community Services Administration in the solicitation and utilization of small or disadvantaged audit firms.

* U. S. GOVERNMENT PRINTING OFFICE 1982 361-215 1021

TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974*

PUBLIC LAW 93-383
93RD CONGRESS, S. 3066
AUGUST 22, 1974

AN ACT

To establish a program of community development block grants, to amend and extend laws relating to housing and urban development, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Housing and Community Development Act of 1974."

TITLE I—COMMUNITY DEVELOPMENT

Findings and Purpose

Sec. 101. (a) The Congress finds and declares that the Nation's cities, towns, and smaller urban communities face critical social, economic, and environmental problems arising in significant measure from—

(1) the growth of population in metropolitan and other urban areas, and the concentration of persons of lower income in central cities;

(2) inadequate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment; and

(3) increasing energy costs which have seriously undermined the quality and overall effectiveness of local community and housing development activities.

(b) The Congress further finds and declares that the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable urban communities as social, economic, and political entities, and require—

(1) systematic and sustained action by Federal, State, and local governments to eliminate blight, to conserve and renew older urban areas, to improve the living environment of low- and moderate-income families, and to develop new centers of population growth and economic activity;

(2) substantial expansion of and greater continuity in the scope and level of Federal assistance, together with increased private investment in support of community development activities;

(3) continuing effort at all levels of government to streamline programs and improve the functioning of agencies responsible for planning, implementing, and evaluating community development efforts; and

(4) concerted action by Federal, State, and local governments to address the economic and social hardships borne by communities as a consequence of scarce fuel supplies.

(c) the primary objective of this title is the development of viable urban communities, by providing decent housing and suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, the Federal assistance provided in this title is for the support of community development activities which are directed toward the following specific objectives—

(1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;

(2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;

(3) the conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;

(4) the expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;

(5) a more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of

*As amended through the Housing and Community Development Amendments of 1981, P.L. 97-35.

neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income;

(7) the restoration and preservation of properties of special value for historic, architectural, or esthetic reasons;

(8) the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population out-migration or a stagnating or declining tax base; and

(9) the conservation of the Nation's scarce energy resources, improvement of energy efficiency, and the provision of alternative and renewable energy sources of supply.

It is the intent of Congress that the Federal assistance made available under this title not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

(d) It is also the purpose of this title to further the development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid which:

(1) provides assistance on an annual basis, with maximum certainty and minimum delay, upon which communities can rely in their planning:

(2) encourages community development activities which are consistent with comprehensive local and areawide development planning:

(3) furthers achievement of the national housing goal of a decent home and a suitable living environment for every American family; and

(4) fosters the undertakings of housing and community development activities in a coordinated and mutually supportive manner by Federal agencies and programs, as well as by communities.

Definitions

Sec. 102. (a) As used in this title—

(1) The term "unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivisions of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands. Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968.

(2) The term "State" means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(3) The term "metropolitan area" means a standard metropolitan statistical area as established by the Department of Commerce.

(4) The term "metropolitan city" means (A) a city within a metropolitan area which is the central city of such area, as defined and used by the Department of Commerce, or (B) any other city, within a metropolitan area, which has a population of fifty thousand or more except that any city which has been classified as a metropolitan city under clause (B) of this paragraph shall continue to be so classified until the decennial census indicates that the population of such city is less than fifty thousand or until September 30, 1982, whichever is later.

(5) The term "city" means (A) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (B) any other unit of general local government which is a town or township and which, in the determination of the Secretary, (i) possesses powers and performs functions comparable to those associated with municipalities, (ii) is closely settled, and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census which have not entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.

(6) The term "urban county" means any county within a metropolitan area which (A) is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government, and either (B) has a combined population of two hundred thousand or more (excluding the population or metropolitan cities therein) in such unincorporated areas and in its included units of general local government (i) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded or (ii) with which it has entered into cooperation agreements to undertake or to

assist in the undertaking of essential community development and housing assistance activities or (C) has a population in excess of one hundred thousand, a population density of at least five thousand persons per square mile, and contains within its boundaries no incorporated place as defined by the United States Bureau of the Census. Any urban county (A) which qualified as an urban county in fiscal year 1981, (B) the population of which includes all of the population of the county (other than the population of metropolitan cities therein), and (C) the population of which for fiscal year 1982 falls below the amount required by clause (B) of the preceding sentence by reason of the 1980 decennial census shall be considered as meeting the population requirements of such clause for fiscal year 1982 and shall not subject to the provisions of section 102(d) in that fiscal year.

(7) The term "nonentitlement area" means an area which is not a metropolitan city or part of an urban county.

(8) The term "population" means total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(9) The term "extent of poverty" means the number of persons whose incomes are below the poverty level. Poverty levels shall be determined by the Secretary pursuant to criteria provided by the Department of Commerce, taking into account and making adjustments, if feasible and appropriate and in the sole discretion of the Secretary, for regional or area variations in income and cost of living, and shall be based on data referable to the same point or period in time.

(10) The term "extent of housing overcrowding" means the number of housing units with 1.01 or more persons per room based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(11) The term 'age of housing' means the number of existing housing units constructed in 1939 or earlier based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(12) The term 'extent of growth lag' means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of such metropolitan city or urban county, if such metropolitan city or urban county had had a population growth rate between 1960 and the date of the most recent population count referable to the same point or period in time equal to the population growth rate for such period of all metropolitan cities.

(13) The term 'housing stock' means the number of existing housing units based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(14) The term 'adjustment factor' means the ratio between the age of housing in the metropolitan city or urban county and the predicted age of housing in such city or county.

(15) The term 'predicted age of housing' means the arithmetic product of the housing stock in the metropolitan city or urban county multiplied times the ratio between the age of housing in all metropolitan areas and the housing stock in all metropolitan areas.

(16) The term 'adjusted age of housing' means the arithmetic product of the age of housing in the metropolitan city or urban county multiplied times the adjustment factor.

(17) The term 'Indian tribe' means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512).

(18) The term "Federal grant-in-aid program" means a program of Federal financial assistance other than loans and other than the assistance provided by this title.

(19) The term "Secretary" means the Secretary of Housing and Urban Development.

(b) Where appropriate, the definitions in subsection (a) shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Department of Commerce available ninety days prior to the beginning of such fiscal year. The Secretary may by regulation change or otherwise modify the meaning of the terms defined in subsection (a) in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Department of Commerce. Notwithstanding any other provision in the law, for the fiscal years of 1981, 1982, and 1983, (1) no data derived from the 1980 Decennial Census, as provided for in subchapter II of title 13, United States Code, except those relating to population and poverty, shall be taken into account for purposes of section 119 or the allocation of amounts under section 106, and (2) no revision to the criteria for establishing a metropolitan area or defining a central city of such an area published after January 1, 1980, shall be taken into account for purposes of this title, except that any area or city which would newly qualify as a metropolitan area or a central city of such an area by reason of any such revision shall be so considered.

(c) One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of general

local government to undertake activities assisted under this title.

(d) With respect to program years beginning with the program year for which grants are made available from amounts appropriated for fiscal year 1982 under section 103, the population of any unit of general local government which is included in that of an urban county is provided in subsection (a)(6)(B) shall be included in the population of such urban county for three program years beginning with the program year in which its population was first so included and shall not otherwise be eligible for a grant under section 106 as a separate entity, unless the urban county does not receive a grant for any year during such three-year period. During any such three-year period, the population of any unit of general local government which is not included in that of the urban county for the first year shall not be eligible for such inclusion in the second or third year.

(e) Any county seeking qualification as an urban county, including any urban county seeking to continue such qualification, shall notify, as provided in this subsection, each unit of general local government, which is included therein and is eligible to elect to have its population excluded from that of an urban county under subsection (a)(6)(B)(i), of its opportunity to make such an election. Such notification shall, at a time and manner prescribed by the Secretary, be provided so as to provide a reasonable period for response prior to the period for which such qualification is sought. The population of any unit of general local government which is provided such notification and which does not inform, at a time and in a manner prescribed by the Secretary, the county of its election to exclude its population from that of the county shall, if the county qualifies as an urban county, be included in the population of such urban county as provided in subsection (d).

Authorizations

Sec. 103. The Secretary is authorized to make grants to States, units of general local government, and Indian tribes to carry out activities in accordance with the provisions of this title. There are authorized to be appropriated for these purposes not to exceed $4,166,000,000 for each of the fiscal years 1982 and 1983. Sums appropriated pursuant to this section shall remain available until expended.

Statement of Activities and Review

Sec. 104. (a)(1) Prior to the receipt in any fiscal year of a grant under section 106(b) by any metropolitan city or urban county, under section 106(d) by any State, or under section 106(d)(2)(B) by any unit of general local government, the grantee shall have prepared a final statement of community development objectives and projected use of funds and shall have provided the Secretary with the certifications required in subsection (b) and, where appropriate, subsection (c). In the case of metropolitan cities and urban counties receiving grants pursuant to section 106(b) and in the case of units of general local government receiving grants pursuant to section 106(d)(2)(B), the statement of projected use of funds shall consist of proposed community development activities. In the case of States receiving grants pursuant to section 106(d), the statement of projected use of funds shall consist of the method by which the States will distribute funds to units of general local government.

(2) In order to permit public examination and appraisal of such statements, to enhance the public accountability of grantees, and to facilitate the coordination of activities with different levels of government, the grantee shall —

(A) furnish citizens information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken;

(B) publish a proposed statement in such a manner to afford affected citizens or, as appropriate, units of general local government an opportunity to examine its content and to submit comments on the proposed statement and on the community development performance of the grantee; and

(C) hold one or more public hearings to obtain the views of citizens on community development and housing needs.

In preparing the final statement, the grantee shall consider any such comments and views and may, if deemed appropriate by the grantee, modify the proposed statement. The final statement shall be made available to the public, and a copy shall be furnished to the Secretary together with the certifications required under subsection (b) and, where appropriate, subsection (c).

(b) Any grant under section 106 shall be made only if the grantee certifies to the satisfaction of the Secretary that—

(1) the grantee is in full compliance with the requirements of subsection (a)(2)(A), (B), and (C) and has made the final statement available to the public;

(2) the grant will be conducted and administered in conformity with Public Law 88-352 and Public Law 90-284;

(3) the projected use of funds has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight; the projected use of funds may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs; and

(4) the grantee will comply with the other provisions of this title and with other applicable laws.

(c)(1) Any grant made under section 106(b) shall be made only if the unit of general local government certifies that it is following a current housing assistance plan which has been approved by the Secretary and which—

(A) accurately surveys the condition of the housing stock in the community and assesses the housing assistance needs of lower income persons (including elderly and handicapped persons, large families, owners of homes requiring rehabilitation assistance, and persons displaced or to be displaced) residing in or expected to reside in the community as a result of existing or projected changes in employment opportunities and population in the community (and those elderly persons residing in or expected to reside in the community), or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary, and identifies housing stock which is in a deteriorated condition, including the impact of conversion of rental housing to condominium or cooperative ownership on such needs;

(B) specifies a realistic annual goal for the number of dwelling units or lower income persons to be assisted, including (i) the relative proportion of new, rehabilitated, and existing dwelling units, including existing rental and owner occupied dwelling units to be upgraded and thereby preserved, (ii) the sizes and types of housing projects and assistance best suited to the needs of lower income persons in the community, and (iii) in the case of subsidized rehabilitation, adequate provisions to assure that a preponderance of persons assisted should be of low and moderate income; and

(C) indicates the general locations of proposed housing for lower income persons, with the objective of (i) furthering the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible, and the reclamation of the housing stock where feasible through the use of a broad range of techniques for housing restoration by local government, the private sector, or community organizations, including provision of a reasonable opportunity for tenants displaced as a result of such activities to relocate in their immediate neighborhood, (ii) promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low-income persons, and (iii) assuring the availability of public facilities and services adequate to serve proposed housing projects.

(2) The Secretary shall establish such dates and manner for the submission of housing assistance plans described in paragraph (1) as the Secretary may prescribe.

(d) Each grantee shall submit to the Secretary, at a time determined by the Secretary, a performance report concerning the use of funds made available under section 106, together with an assessment by the grantee of the relationship of such use of the objectives identified in the grantee's statement under subsection (a). The Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine—

(1)[1] in the case of grants made under section 106(b) or section 106(d)(2)(B), whether the grantee has carried out its activities and, where applicable, its housing assistance plan in a timely manner, whether the grantee has carried out those activities and its certifications in accordance with the requirements and the primary objectives of this title and with other applicable laws, and whether the grantee has a continuing capacity to carry out those activities in a timely manner; and

(2) in the case of grants to States made under section 106(d) whether the State has distributed funds to units of general local government in a timely manner and in conformance to the method of distribution described in its statement, whether the State has carried out its certifications in compliance with the requirements of this title and other applicable laws, and whether the State has made such reviews and audits of the units of general local government as may be necessary or appropriate to determine whether they have satisfied the applicable performance criteria described in paragraph (1) of this subsection.

The Secretary may make appropriate adjustments in the amount of the annual grants in accordance with the Secretary's findings under this subsection. With respect to assistance made available to units of general local government under section 106(d), the Secretary may adjust, reduce, or withdraw such assistance, or take other action as appropriate in accordance with the Secretary's reviews and audits under this subsection, except that funds already expended on eligible activities under this title shall not be recaptured or deducted from future assistance to such units of general local government.

[1] The amendment made by section 104(d)(1) becomes effective October 1, 1982.

(e) Insofar as they relate to funds provided under this title, the financial transactions of recipients of such funds may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(f)(1) In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary), are most effectively implemented in connection with the expenditure of funds under this title, and to assure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may under regulations provide for the release of funds for particular projects to recipients of assistance under this title to assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such act and other provisions of the law as the regulations of the Secretary specify, that would apply to the Secretary, were he to undertake such projects as Federal projects. The Secretary shall issue regulations to carry out this subsection only after consultation with the Council on Environmental Quality.

(2) The Secretary shall approve the release of funds for projects subject to the procedures authorized by this subsection only if, at least fifteen days prior to such approval and prior to any commitment of funds to such projects other than for purposes authorized by section 105(a)(12) or for environmental studies, the recipient of assistance under this title has submitted to the Secretary a request for such release accompanied by a certification which meets the requirements of paragraph (3) The Secretary's approval of any such certification shall be deemed to satisfy his responsibilities under the National Environmental Policy Act of 1969 and such other provisions of law specified in regulations issued by the Secretary; insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto which are covered by such certification.

(3) A certification under the procedures authorized by this sub-section shall—

(A) be in a form acceptable to the Secretary.

(B) be executed by the chief executive officer or other officer of the recipients of assistance under this title qualified under regulations of the Secretary.

(C) specify that the recipients of assistance under this title has fully carried out its responsibilities as described under paragraph (1) of this subsection, and

(D) specify that the certifying officer (i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and each provision in the law specified in regulations issued by the Secretary; insofar as the provisions of such Act or other such provision of the law, apply pursuant to paragraph (1) of this subsection, and (ii) is authorized and consents on behalf of the recipients of assistance under this title and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(4) In the case of grants made to States pursuant to section 106(d), the State shall perform those actions of the Secretary described in paragraph (2) and the performance of such actions shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of such paragraph.

(g)(1) Units of general local government receiving assistance under this title may receive funds, in one payment, in an amount not to exceed the total amount designated in the grant (or, in the case of a unit of general local government receiving a distribution from a State pursuant to Section 106(d), not to exceed the total amount of such distribution) for use in establishing a revolving loan fund which is to be established in a private financial institution and which is to be used to finance rehabilitation activities assisted under this title. Rehabilitation activities authorized under this section shall begin within 45 days after receipt of such payment.

(2) The Secretary shall establish standards for such cash payments which will insure that the deposits result in appropriate benefits in support of the recipient's rehabilitation program. These standards shall be designed to assure that the benefits to be derived from the local program include, at a minimum, one or more of the following elements, or such other criteria as determined by the Secretary—

(A) leverage of community development block grant funds so that participating financial institutions commit private funds for loans in the rehabilitation program in amounts substantially in excess of deposit of community development funds;

(B) commitment of private funds for rehabilitation loans at below-market interest rates or with repayment periods lengthened or at higher risk than would normally be taken:

(C) provision of administrative services in support of the rehabilitation program by the participating lending institutions; and

(D) interest earned on such cash deposits shall be used in a manner which supports the community rehabilitation program.

(h) In any case in which a metropolitan city is located, in whole or in part, within an urban county, the Secretary may, upon the joint request of such city and

county, approve the inclusion of the metropolitan city as part of the urban county for purposes of submitting a statement under section 104(a) and carrying out activities under this title.

Eligible Activities

Sec. 105. (a) Activities assisted under this title may include only—

(1) the acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or (E) to be used for other public purposes;

(2) the acquisiton, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation which promote energy efficiency) of public works, facilities and site or other improvements—including neighborhood facilities, centers for the handicapped, senior centers, historic properties, utilities (including power generation and distribution facilities using renewable resource energy systems), streets, street lights, water and sewer facilities, foundations and platforms for air rights sites, pedestrian malls and walkways, and parks, playgrounds, and recreation facilities (including parks, playgrounds, and recreation facilities established as a result of reclamation and other construction activities carried out in connection with a river and land adjacent thereto where assistance under other Federal laws or programs is determined to be unavailable), flood and drainage facilities in cases where assistance for such facilities under other Federal laws or programs is determined to be unavailable, and parking facilities, solid waste disposal facilities, recycling or conversion facilities, and fire protection services and facilities which are located in or which serve designated community development areas.

(3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, and rehabilitation (including rehabilitation which promotes energy efficiency) , buildings and improvements (including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation, of privately owned properties and including the renovation of closed school buildings);

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this title;

(7) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

(8) provisions of public services, including but not limited to those concerned with employment, crime prevention, chid care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 10 per centum of the amount of any assistance to a unit of general local government under this title may be used for activities under this paragraph;

(9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this title;

(10) payment of the cost of completing a project funded under title I of the Housing Act of 1949;

(11) relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

(12) activities necessary (A) to develop a comprehensive community development plan, and (B) to develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and objectives, (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and (v)

carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981;

(14) activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property; (B) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities, site improvements, and utilities, and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (C) planning;

(15) grants to neighborhood-based nonprofit organizations, local development corporations, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 101(c);

(16) activities necessary to the development of comprehensive community-wide energy use strategy, which may include items such as—

(A) a description of energy use and projected demand by sector, by fuel type, and by geographic area;

(B) an analysis of the options available to the community to conserve scarce fuels and encourage use of renewable energy resources;

(C) an analysis of the manner in, and the extent to, which the community's neighborhood revitalization, housing, and economic development strategies will support its energy conservation strategy;

(D) an analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements budgeting, land use planning and zoning, and traffic control, parking, and public transportation functions;

(E) a statement of the actions the community will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities;

(F) appropriate provisions for energy emergencies;

(G) identification of the local governmental unit responsible for administering the energy use strategy;

(H) provision of a schedule for implementation of each element in the strategy; and

(I) a projection of the savings in scarce fossil fuel consumption and the development and use of renewable energy resources that will result from implementation of the energy use strategy; and

(17) provision of assistance to private, for-profit entities, when the assistance is necessary or appropriate to carry out an economic development project.

(b) Upon the request of the recipient of assistance under this title, the Secretary may agree to perform administrative services on a reimbursable basis on behalf of such recipient in connection with loans or grants for the rehabilitation of properties as authorized under subsection (a)(4).

Allocation And Distribution Of Funds

Sec. 106. (a) Of the amount approved in an appropriation Act under section 103 for grants in any year (excluding the amounts provided for use in accordance with section 107 and section 119), 70 per centum shall be allocated by the Secretary to metropolitan cities and urban counties. Except as otherwise specifically authorized, each metropolitan city and urban county shall be entitled to an annual grant from such allocation in an amount not exceeding its basic amount computed pursuant to paragraph (1) or (2) of subsection (b).

(b)(1) The Secretary shall determine the amount to be allocated to each metropolitan city which shall be the greater of an amount that bears the same ratio to the allocation for all metropolitan areas as either—

(A) the average of the ratios between—

(i) the population of that city and the population of all metropolitan areas;

(ii) the extent of poverty in that city and the extent of poverty in all metropolitan areas; and

(iii) the extent of housing overcrowding in that city and the extent of housing overcrowding in all metropolitan areas; or

(B) the average of the ratios between—

(i) the extent of growth lag in that city and the extent of growth lag in all metropolitan cities;

(ii) the extent of poverty in that city and the extent of poverty in all metropolitan areas; and

(iii) the age of housing in that city and the age of housing in all metropolitan areas.

(2) The Secretary shall determine the amount to be allocated to each urban county, which shall be the greater of an amount that bears the same ratio to the allocation for all metropolitan areas as either—

(A) the average of the ratios between—

(i) the population of that urban county and the population of all metropolitan areas;

(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan areas; and

(iii) the extent of housing overcrowding in all metropolitan areas; or

(B) the average of the ratios between—

(i) the extent of growth lag in that urban county and the extent of growth lag in all metropolitan cities and urban counties;

(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan areas; and

(iii) the age of housing in that urban county and the age of housing in all metropolitan areas.

(3) In determining the average of ratios under paragraphs (1)(A) and (2)(A), the ratio involving the extent of poverty shall be counted twice, and each of the other ratios shall be counted once; and in determining the average of ratios under paragraphs (1)(B) and (2)(B), the ratio involving the extent of growth lag shall be counted once, the ratio involving the extent of poverty shall be counted one and one-half times, and the ratio involving the age of housing shall be counted two and one-half times.

(4) In computing amounts or exclusions under this section with respect to any urban county, there shall be excluded units of general local government located in the county the populations of which are not counted in determining the eligibility of the urban county to receive a grant under this subsection, except that there shall be included any independent city (as defined by the Bureau of the Census) which—

(A) is not part of any county;

(B) is not eligible for a grant pursuant to subsection (b)(1);

(C) is contiguous to the urban county;

(D) has entered into cooperation agreements with the urban county which provide that the urban county is to undertake or to assist in the undertaking of essential community development and housing assistance activities with respect to such independent city; and

(E) is not included as a part of any unit of general local government for purposes of this section. Any independent city which is included in any fiscal year for purposes of computing amounts pursuant to the preceding sentence shall not be eligible to receive assistance under subsection (d) with respect to such fiscal year.

(5) In computing the amounts under this section with respect to any urban county, there shall be included all of the area of any unit of local government which is part of, but not located entirely within the boundaries of, such urban county if the part of such unit of local government which is within the boundaries of such urban county would otherwise be included in computing the amount for such urban county under this section, and if the part of such unit of local government which is not within the boundaries of such urban county is not included as a part of any other unit of local government for the purpose of this section. Any amount received by such urban county under this section may be used with respect to the part of such unit of local government which is outside the boundaries of such urban county.

(c)(1) Except as provided in paragraph (2), any amounts allocated to a metropolitan city or an urban county pursuant to the preceding provisions of this section which are not received by the city or county for a fiscal year because of failure to meet the requirements of section 104(a), (b), or (c), or which become available as a result of actions under section 104(d) or 111, shall be reallocated in the succeeding fiscal year to the other metropolitan cities and urban counties in the same metropolitan area which certify to the satisfaction of the Secretary that they would be adversely affected by the loss of such amounts from the metropolitan area. The amount of the share of funds reallocated under this paragraph for any metropolitan city or urban county shall bear the same ratio to the total of such reallocated funds in the metropolitan area as the amount of funds awarded to the city or county for the fiscal year in which the reallocated funds become available bears to the total amount of funds awarded to all metropolitan cities and urban counties in the same metropolitan area for that fiscal year, except that—

(A) in determining the amounts awarded to cities or counties for purposes of calculating shares pursuant to this sentence, there shall be excluded from the award of any city or county any amounts which become available as a result of actions against such city or county under section 111;

(B) in reallocating amounts resulting from an action under section 104(d) or section 111, the city or county against whom any such action was taken shall be excluded from the calculation of shares for purposes of reallocating the amounts becoming available as a result of such action; and

(C) in no event may the share of reallocated funds for any metropolitan city or urban county exceed 25 per centum of the amount awarded to the city or county under section 106(b) for the fiscal year in which the reallocated funds under this paragraph become available.

Any amounts allocated under section 106(b) which became available for reallocations and for which no metropolitan city or urban county qualifies under this paragraph shall be added to amounts available for

allocation under such section 106(b) in the succeeding fiscal year.

(2) Notwithstanding any other provision of this title, the Secretary shall make grants from amounts authorized for use under section 106(b) by the Department of Housing and Urban Development — Independent Agencies Appropriation Act, 1981, in accordance with the provisions of this title which governed grants with respect to such amounts, as such provisions existed prior to the effective date of the Housing and Community Development Amendments of 1981, except that any such amounts which are not obligated before January 1, 1982, shall be reallocated in accordance with paragraph (1).

(d)(1) Of the amount approved in an appropriation Act under section 103 for grants in any year (excluding the amounts provided for use in accordance with section 107 and section 119), 30 per centum shall be allocated among the States for use in nonentitlement areas. The allocation for each State shall be the greater of an amount that bears the same ratio to the allocation for such areas of all States available under this subparagraph as either—

(A) the average of the ratios between—

(i) the population of the nonentitlement areas in that State and the population of the nonentitlement areas of all States;

(ii) the extent of poverty in the nonentitlement areas in that State and the extent of poverty in the nonentitlement areas of all States; and

(iii) the extent of housing overcrowding in the nonentitlement areas in that State and the extent of housing overcrowding in the nonentitlement areas of all States; or

(B) the average of the ratios between—

(i) the age of housing in the nonentitlement areas in that State and the age of housing in the nonentitlement areas of all States;

(ii) the extent of poverty in the nonentitlement areas in that State and the extent of poverty in the nonentitlement areas of all States; and

(iii) the population of the nonentitlement areas in that State and the population of the nonentitlement areas of all States.

In determining the average of the ratios under subparagraph (A) the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once; and in determining the average of the ratios under subparagraph (B), the ratio involving the age of housing shall be counted two and one-half times, the ratio involving the extent of poverty shall be counted one and one-half times, and the ratio involving population shall be counted once. The Secretary shall, in order to compensate for the discrepancy between the total of the amounts to be allocated under this paragraph and the total of the amounts available under such paragraph, make a pro rata reduction of each amount allocated to the nonentitlement areas in each State under such paragraph so that the nonentitlement areas in each State will receive an amount which represents the same percentage of the total amount available under such paragraph as the percentage which the nonentitlement areas of the same State would have received under such paragraph if the total amount available under such paragraph had equaled the total amount which was allocated under such paragraph.

(2)(A) Amounts allocated under paragraph (1) shall be distributed to units of general local government located in nonentitlement areas of the State to carry out activities in accordance with the provisions of this title—

(i) by the State, consistent with the statement submitted under section 104(a); or

(ii) by the Secretary, in any case described in subparagraph (B), for use by units of general local government in accordance with paragraph (3)(B).

Notwithstanding any provision of this title, the Secretary shall make grants from amounts authorized for use in nonentitlement areas by the Department of Housing and Urban Development — Independent Agencies Appropriation Act, 1981, in accordance with the provisions of this title which governed grants with respect to such amounts, as such provisions existed prior to the effective date of the Housing and Community Development Amendments of 1981. Any amounts under the preceding sentence (except amounts for which preapplications have been approved by the Secretary prior to October 1, 1981, and which have been obligated by January 1, 1982) which are or become available for obligation after fiscal year 1981 shall be available for distribution in the State in which the grants from such amounts were made, by the State or by the Secretary, whichever is distributing the State allocation in the fiscal year in which such amounts are or become available.

(B) The Secretary shall distribute amounts allocated under paragraph (1) where—

(i) the State has elected, in such manner and before such time as the Secretary may prescribe, not to distribute such amounts; or

(ii) the State has failed to submit the certifications described in subparagraph (C).

(C) To receive and distribute amounts allocated under paragraph (1), the Governor must certify that the State, with respect to units of general local government in nonentitlement areas—

(i) engages or will engage in planning for community development activities;

(ii) provides or will provide technical assistance to units of general local government in connection with community development programs;

(iii) will provide, out of State resources, funds for community development activities in an amount which is at least 10 per centum of the amounts allocated for use in the State pursuant to paragraph (1); and

(iv) has consulted with local elected officials from among units of general local government located in nonentitlement areas of that State in determining the method of distribution of funds required by subparagraph (A).

(3)(A) If the State receives and distributes such amounts, it shall be responsible for the administration of funds so distributed. The State shall pay from its own resources all administrative expenses incurred by the State in carrying out its responsibilities under this title, except that from the amounts received for distribution in nonentitlement areas, the State may deduct an amount not to exceed 50 per centum of the costs incurred by the State in carrying out such responsibilities. Amounts so deducted shall not exceed 2 per centum of the amount so received.

(B) If the Secretary distributes such amounts, the distribution shall be made in accordance with determinations of the Secretary pursuant to statements submitted and the other requirements of section 104 (other than subsection (c)) and in accordance with regulations and procedures prescribed by the Secretary.

(C) Any amounts allocated for use in a State under this subsection which become available as a result of actions under section 104(d) or 111 shall—

(i) in the case of actions against units of general local government in nonentitlement areas, be added to amounts available for distribution in the State in the fiscal year in which the amounts become so available; or

(ii) in the case of actions against the State, be added to amounts available for distribution in the State in the succeeding fiscal year.

Amounts reallocated under this subparagraph shall be available for distribution by the State or by the Secretary, whichever is distributing the State allocation in the fiscal year in which such reallocated amounts are added.

(4) In computing amounts under paragraph (1), Indian tribes shall be excluded.

(e) The Secretary may fix such qualification or submission dates as he determines are necessary to permit the computations and determinations required by this section to be made in a timely manner, and all such computations and determinations shall be final and conclusive.

(f) In the event that the total amount available for distribution under this section in any fiscal year is insufficient to meet all basic grant and entitlement needs as provided pursuant to this section, and funds are not otherwise appropriated to meet such deficiency, the Secretary shall meet the deficiency through a pro rata reduction of all basic grant entitlement amounts.

Discretionary Fund

Sec. 107. (a) Of the total amount approved in appropriation Acts under section 103 for each of the fiscal years 1982 and 1983, not more than $60,000,000 for each of the fiscal years 1982 and 1983 may be set aside in a special discretionary fund for grants under subsection (b). Grants under this section are in addition to any other grants which may be made under this title to the same entities for the same purposes.

(b) From amounts set aside under subsection (a), the Secretary is authorized to make grants—

(1) in behalf of new communities assisted under title VII of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968 or in behalf of new community projects assisted under title X of the National Housing Act which meet the eligibility standards set forth in title VII of the Housing and Urban Development Act of 1970 and which were the subject of an application or preapplication under such title prior to January 14, 1975;

(2) in Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(3) to Indian tribes; and

(4) to States, units of general local government, Indian tribes, or areawide planning organizations for the purpose of providing technical assistance in planning, developing, and administering assistance under this title, and to States and units of general local government for implementing special projects otherwise authorized under this title. The Secretary may also provide, directly or through contracts, technical assistance under this paragraph to such governmental units, or to a group designated by such a governmental unit for the purpose of assisting that governmental unit to carry out assistance under this title.

(c) Amounts set aside for use under subsection (b) in any fiscal year but not used in that year shall remain available for use in subsequent fiscal years in accordance with the provisions of that subsection.

(d)(1) Except as provided in paragraph (2), no grant may be made under this section or section 119 unless the applicant provides satisfactory assurances that its programs will be conducted and administered in conformity with Public Law 88-352 and Public Law 90-284.

(2) No grant may be made to an Indian tribe under this section or section 119 unless the applicant provides satisfactory assurances that its program will be conducted and administered in conformity with title II of Public Law 90-284. The Secretary may waive, in connection with grants to Indian tribes, the provisions of section 109 and section 110.

(3) The Secretary may accept a certification from the applicant that it has complied with the requirements of paragraph (1) or (2), as appropriate.

Guarantee Of Loans For Acquisition Of Property

Sec. 108. (a) The Secretary is authorized, upon such terms and conditions as the Secretary may prescribe, to guarantee and make commitments to guarantee, only to such extent or in such amounts as provided in appropriation Acts, the notes or other obligations issued by units of general local government, or by public agencies designated by such units of general local government, for the purposes of financing acquisition of real property or the rehabilitation of real property owned by the unit of general local government (including such related expenses as the Secretary may permit by regulation). Notes or other obligations guaranteed pursuant to this section shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary. During the fiscal year 1981, the Secretary may not enter into commitments to guarantee under this section notes and other obligations with an aggregate principal amount in excess of $300,000,000.

(b) No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the issuer's total outstanding notes or obligations guaranteed under this section would thereby exceed an amount equal to three times the amount of the grant approval for the issuer pursuant to section 106.

(c) Notwithstanding any other provision of this title grants allocated to an issuer pursuant to this title (including program income derived therefrom) are authorized for use in the payment of principal and interest due (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) on the notes or other obligations guaranteed pursuant to this section.

(d) To assure the repayment of notes or other obligations and charges incurred under this section and as a condition for receiving such guarantees, the Secretary shall require the issuer to—

(1) enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed hereunder;

(2) pledge any grant for which the issuer may become eligible under this title; and

(3) furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this title or dispositions proceeds from the sale of land or rehabilitated property.

(e) The Secretary is authorized, notwithstanding any other provision of this title, to apply grants pledged pursuant to subsection (d)(2) to any repayments due the United States as a result of such guarantees.";

(f) The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

(g) The Secretary may issue obligations to the Secretary of the Treasury in an amount outstanding at any one time sufficient to enable the Secretary to carry out his obligations under guarantees authorized by this section. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Secretary issued under this section, and for such purposes is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which such securities may be issued under such Act are extended to include the purchases of the Secretary's obligations hereunder.

(h) Obligations guaranteed under this section shall be subject to Federal taxation as provided in sub-

section (g). The Secretary is authorized to make and to contract to make, grants, in such amounts as may be approved in appropriations Acts, to or on behalf of the issuing unit of general local government or public agency to cover not to exceed 30 per centum of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing unit or agency of such obligations.

(i) Section 3689 of the Revised Statutes, as amended (31 U.S.C. 711), is amended by adding at the end thereof a new paragraph as follows:

"(22) For payments required from time to time under contracts entered into pursuant to section 108 of the Housing and Community Development Act of 1974 for payment of interest costs on obligations guaranteed by the Secretary of Housing and Urban Development under that section."

(j) With respect to any obligation issued by a unit of general local government or designated agency which is guaranteed pursuant to this section, the interest paid on such obligation shall be included in gross income for the purpose of chapter 1 of the Internal Revenue Code of 1954.

(k) The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to subsection (a) shall not at any time exceed $3,500,000,000 or such higher amount as may be authorized to be apropriated for sections 106 and 107 for any fiscal year.

Nondiscrimination

Sec. 109. (a) No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

(b) Whenever the Secretary determines that a State or unit of general local government which is a recipient of assistance under this title has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of such State or the chief executive officer of such unit of local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the Governor or the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); (3) exercise the powers and functions provided for in section 111(a) of this Act; or (4) take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that a State government or unit of general local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

Labor Standards

Sec. 110. All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a — 276a-5); *Provided*. That this section shall apply to the rehabilitation of residential property only if such property is designed for residential use for eight or more families. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c)).

Remedies For Noncompliance

Sec. 111. (a) If the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this title has failed to comply substantially with any provision of this title, the Secretary, until he is satisfied that there is no longer any such failure to comply, shall—

(1) terminate payments to the recipient under this title, or

(2) reduce payments to the recipient under this title by an amount equal to the amount of such payments which were not expended in accordance with this title, or

(3) limit the availability of payments under this title to programs, projects, or activities not affected by such failure to comply.

(b)(1) In lieu of, or in addition to, any action authorized by subsection (a), the Secretary may, if he has reason to believe that a recipient has failed to comply substantially with any provision of this title, refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Upon such a referral the Attorney General may bring a civil action in any United States district court having venure thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this title which was not expended in accordance with it, or for mandatory or injunctive relief.

(c)(1) Any recipient which receives notice under subsection (a) of the termination, reduction, or limitation of payments under this title may, within sixty days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall respect the Secretary in the litigation.

(2) The Secretary shall file in the court record of the proceeding on which he based his action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(3) The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record. The Secretary may modify his findings of fact, or make new findings, by reason of the new evidence so taken and filed with the court, and he shall also file such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole, and shall also file his recommendation, if any, for the modification or setting aside of his original action.

(4) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

Use Of Grants To Settle Outstanding Urban Renewal Loans

Sec. 112. (a) The Secretary is authorized, notwithstanding any other provision of this title, to apply a portion of the grants, not to exceed 20 per centum thereof without the request of the recipient, made or to be made under section 103 in any fiscal year pursuant to an allocation under section 106 to any unit of general local government toward payment of the principal of, and accrued interest on, any temporary loan made in connection with urban renewal projects under title I of the Housing Act of 1949 being carried out within the jurisdiction of such unit of general local government if—

(1) the Secretary determines, after consultation with the local public agency carrying out the project and the chief executive of such unit of general local public agency carrying out the project, and the chief executive of such unit of general local government, that the project cannot be completed without additional capital grants, or

(2) the local public agency carrying out the project submits to the Secretary an appropriate request which is concurred in by the governing body of such unit of general local government.

In determining the amounts to be applied to the payment of temporary loans, the Secretary shall make an accounting for each project taking into consideration the costs incurred or to be incurred, the estimated proceeds upon any sale or disposition of property, and the capital grants approved for the project.

(b) Upon application by any local public agency carrying out an urban renewal project under title I of the Housing Act of 1949, which application is approved by the governing body of the unit of general local government in which the project is located, the Secretary may approve a financial settlement of such project if he finds that a surplus of capital grant funds after full repayment of temporary loan indebtedness will result and may authorize the unit of general local government to use such surplus funds, without deduction or offset, in accordance with the provisions of this title.

Reporting Requirements

Sec. 113. (a) Not later than 180 days after the close of each fiscal year in which assistance under this title is furnished, the Secretary shall submit to the Congress a report which shall contain—

(1) a description of the progress made in accomplishing the objectives of this title;

(2) a summary of the use of such funds during the preceding fiscal year; and

(3) with respect to the action grants authorized under section 119, a listing of each unit of general local government receiving funds and the amount of such grants, as well as a brief summary of the projects funded for each such unit, the extent of financial participation by other public or private entities, and the impact on employment and economic activity of such projects during the previous fiscal year.

(b) The Secretary is authorized to require recipients of asistance under this title to submit to him such reports and other information as may be necessary in order for the Secretary to make the report required by subsection (a).

Consultation

Sec. 114. In carrying out the provisions of this title including the issuance of regulations, the Secretary shall consult with other Federal departments and agencies administering Federal grant-in-aid programs.

Interstate Agreements

Sec. 115. The consent of the Congress is hereby given to any two or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative effort and mutual assistance in support of community development planning and programs carried out under this title as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

Transition Provisions

Sec. 116. (a) Except with respect to projects and programs for which funds have been previously committed, no new grants or loans shall be made after January 1, 1975, under (1) title I of the Demonstration Cities and Metropolitan Development Act of 1966, (2) title I of the Housing Act of 1949, (3) section 702 or section 703 of the Housing and Urban Development Act of 1965, (4) title II of the Housing Amendments of 1955, or (5) title VII of the Housing Act of 1961.

(b) In the case of funds available for any fiscal year, the Secretary shall not consider any statement under section 104(a), unless such statement is submitted on or prior to such date (in that fiscal year) as the Secretary shall establish as the final date for submission of statements in that year.

Liquidation Of Superseded Programs

Sec. 117. (a) Section 3689 of the Revised Statutes, as amended (31 U.S.C. 711), is amended by adding after paragraph (22) (as added by section 108(f) of this Act) the following new paragraph:

"(23) For payments required from time to time under contracts entered into pursuant to section 103(b) of the Housing Act of 1949 with respect to projects or programs for which funds have been committed on or before December 31, 1974, and for which funds have not previously been appropriated."

(b) The Secretary is authorized to transfer the assets and liabilities of any program which is superseded or inactive by reason of this title to the revolving fund for liquidating programs established pursuant to title II of the Independent Offices Appropriation Act of 1965 (Public Law 83—428; 68 Stat. 272, 295). [sic][1]

Sec. 118 [repealed]

Urban Development Action Grants [2]

Sec. 119. (a) The Secretary is authorized to make urban development action grants to cities and urban counties which are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery. Of the total amount approved in appropriation Acts under section 103 for each of the fiscal years 1982 and 1983, not more than $500,000,000 shall be available for each of the fiscal years 1982 and 1983 for grants under this section.

(b)(1) Urban development action grants shall be made only to cities and urban counties which have, in

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[1] A technical error appears. The reference should be to Title II of the Independent Offices Appropriation Act, 1955, Public Law 83-428. The Statutes at Large reference is correct.

[2] Sec. 308(c) of the Housing and Community Amendments of 1981 provides that the amendments in section 119 shall become effective on the effective date of the implementing regulations. As soon as practicable, but not later than January 1, 1982, the Secretary shall issue such final rules and regulations as the Secretary determines are necessary to carry out the amended program.

the determination of the Secretary, demonstrated results in providing housing for low- and moderate-income persons and in providing equal opportunity in housing and employment for low- and moderate-income persons and members of minority groups. The Secretary shall issue regulations establishing criteria in accordance with the preceding sentence and setting forth minimum standards for determining the level of economic distress of cities and urban counties for eligibility for such grants. These standards shall take into account factors such as the age of housing; the extent of poverty; the extent of population lag; growth of per capita income; and, where data are available, the extent of unemployment and job lag.

(2) A city or urban county which fails to meet the minimum standards established pursuant to paragraph (1) shall be eligible for assistance under this section if it meets the requirements of the first sentence of such paragraph and—

(A) in the case of a city with a population of fifty thousand persons or more or an urban county, contains an area (i) composed of one or more contiguous census tracts, enumeration districts, or block groups, as defined by the United States Bureau of the Census, having at least a population of ten thousand persons or 10 per centum of the population of the city or urban county; (ii) in which at lest 70 per centum of the residents have incomes below 80 per centum of the median income of the city or urban county; and (iii) in which at least 30 per centum of the residents have incomes below the national poverty level; or

(B) in the case of a city with a population of less than fifty thousand persons, contains an area (i) composed of one or more contiguous census tracts, enumeration districts, or block groups or other areas defined by the United States Bureau of the Census or for which data certified by the United States Bureau of the Census are available having at least a population of two thousand five hundred persons or 10 per centum of the population of the city, whichever is greater; (ii) in which at least 70 per centum of the residents have incomes below 80 per centum of the median income of the city; and (iii) in which at least 30 per centum of the residents have incomes below the national poverty level. The Secretary shall use up to, but not more than, 20 per centum of the funds appropriated for use in any fiscal year under this section for the purpose of making grants to cities and urban counties eligible under this paragraph.

(c) Applications for assistance under this section shall—

(1) in the case of an application for a grant under subsection (b)(2), include documentation of grant eligibility in accordance with the standards described in that subsection;

(2) set forth the activities for which assistance is sought, including (A) an estimate of the costs and general location of the activities; (B) a summary of the public and private resources which are expected to be made available in connection with the activities, including how the activities will take advantage of unique opportunities to attract private investment; and (C) an analysis of the economic benefits which the activities are expected to produce;

(3) contain a certification satisfactory to the Secretary that the applicant, prior to submission of its application, (A) has held public hearings to obtain the views of citizens, particularly residents of the area in which the proposed activities are to be carried out, and (B) has analyzed the impact of these proposed activities on the residents, particularly those of low and moderate income, of the residential neighborhood, and on the neighborhood in which they are to be carried out; and

(4) contain a certification satisfactory to the Secretary that the applicant, prior to submission of its application, (A) has identified all properties, if any, which are included on the National Register of Historic Places and which, as determined by the applicant will be affected by the project for which the application is made; (B) has identified all other properties, if any, which will be affected by such project and which, as determined by the applicant, may meet the criteria established by the Secretary of the Interior for inclusion on such Register, together with documentation relating to the inclusion of such properties on the Register; (C) has determined the effect, as determined by the applicant, of the project on the properties identified pursuant to clauses (A) and (B); and (D) will comply with the requirements of section 121.

(d)(1) Except in the case of a city or urban county eligible under subsection (b)(2), the Secretary shall establish selection criteria for grants under this section which must include (A) as the primary criterion, the comparative degree of economic distress among applicants, as measured (in the case of a metropolitan city or urban county) by the differences in the extent of growth lag, the extent of poverty, and the adjusted age of housing in the metropolitan city or urban county; (B) other factors determined to be relevant by the Secretary in assessing the comparative degree of economic deterioration in cities and urban counties; and (C) at least the following other criteria: demonstrated performance of the city or urban county in housing and community development programs; the extent to which the grant will stimulate economic recovery by leveraging private investment; the number of permanent jobs to be created and their relation to the amount of grant funds requested; the proportion of permanent jobs accessible to lower income persons and minorities, including per-

sons who are unemployed; the impact of the proposed activities on the fiscal base of the city or urban county and its relation to the amount of grant funds requested; the extent to which State or local government funding or special economic incentives have been committed; and the feasibility of accomplishing the proposed activities in a timely fashion within the grant amount available.

(2) For the purpose of making grants with respect to areas described in subsection (b)(2), the Secretary shall establish selection criteria, which must include (A) factors determined to be relevant by the Secretary in assessing the comparative degree of economic deterioration among eligible areas, and (B) such other criteria as the Secretary may determine, including at a minimum the criteria listed in paragraph (1)(C) of this subsection.

(e) The Secretary may not approve any grant to a city or urban county eligible under subsection (b)(2) unless—

(1) the grant will be used in connection with a project located in an area described in subsection (b)(2), except that the Secretary may waive this requirement where the Secretary determines (A) that there is no suitable site for the project within that area, (B) the project will be located directly adjacent to that area, and (C) the project will contribute substantially to the economic development of that area;

(2) the city or urban county has demonstrated to the satisfaction of the Secretary that basic services supplied by the city or urban county to the area described in subsection (b)(2) are at least equivalent, as measured by per capita expenditures, to those supplied to other areas within the city or urban county which are similar in population size and physical characteristics and which have median incomes above the median income for the city or urban county;

(3) the grant will be used in connection with a project which will directly benefit the low- and moderate-income families and individuals residing in the area described in subsection (b)(2); and

(4) the city or urban county makes available, from its own funds or from funds received from the State or under any Federal program which permits the use of financial assistance to meet the non-Federal share requirements of Federal grant-in-aid programs, an amount equal to 20 per centum of the grant to be available under this section to be used in carrying out the activities described in the application.

(f) Activities assisted under this section may include such activities, in addition to those authorized under section 105(a), as the Secretary determines to be consistent with the purposes of this section.

(g) The Secretary shall, at least on an annual basis, make reviews and audits of recipients of grants under this section as necessary to determine the progress made in carrying out activities substantially in accordance with approved plans and timetables. The Secretary may adjust, reduce, or withdraw grant funds, or take other action as appropriate in accordance with the findings of these reviews and audits, except that funds already expended on eligible activities under this title shall not be recaptured or deducted from future grants made to the recipient.

(h) No assistance may be provided under this section for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary finds that the relocation does not significantly and adversely affect the unemployment or economic base of the area from which the industrial or commercial plant or facility is to be relocated.

(i) Not less than 25 per centum of the funds made available for grants under this section shall be used for cities with populations of less than fifty thousand persons which are not central cities of a metropolitan statistical area.

(j) A grant may be made under this section only where the Secretary determines that there is a strong probability that (1) the non-Federal investment in the project would not be made without the grant, and (2) the grant would not substitute for non-Federal funds which are otherwise available to the project.

(k) In making grants under this section, the Secretary shall take such steps as the Secretary deems appropriate to assure that the amount of the grant provided is the least necessary to make the project feasible.

(l) For purposes of this section, the Secretary may reduce or waive the requirement in section 102(a)(5)(B)(ii) that a town or township be closely settled.

(m) In the case of any application which identifies any property in accordance with subsection (c)(4)(B), the Secretary may not commit funds with respect to an approved application unless the applicant has certified to the Secretary that the appropriate State historic preservation officer and the Secretary of the Interior have been provided an opportunity to take action in accordance with the provisions of section 121(b).

(n)(1) For the purposes of this section, the term 'city' includes Guam, the Virgin Islands, and Indian tribes.

(2) The Secretary may not approve a grant to an Indian tribe under this section unless the tribe (A) is located on a reservation or in an Alaskan Native Village, and (B) is an eligible recipient under the State and Local Fiscal Assistance Act of 1972.

(o) If no amounts are set aside under, or amounts are precluded from being appropriated for this section for fiscal years after fiscal year 1983, any amount which is or becomes available for use under this section after fiscal year 1982 shall be added to amounts appropriated under section 103.

FAIR PARTICIPATION FOR SMALL COMMUNITIES

Sec. 120. No community shall be barred from participating in any program authorized under this title solely on the basis of population, except as expressly authorized by statute.

HISTORIC PRESERVATION REQUIREMENTS

Sec. 121. (a) With respect to applications for assistance under section 119, the Secretary of the Interior, after consulting with the Secretary, shall prescribe and implement regulations concerning projects funded under section 119 and their relationship with—

(1) 'An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes', approved October 14, 1966, as amended; and

(2) 'An Act to provide for the preservation of historical and archaeological data (including relics and specimens) which might otherwise be lost as a result of the construction of a dam', approved June 27, 1960, as amended.

(b) In prescribing and implementing such regulations with respect to applications submitted under section 119 which identify any property pursuant to subsection (c)(4)(B) of such section, the Secretary of the Interior shall provide at least that—

(1) the appropriate State historic preservation officer (as determined in accordance with regulations prescribed by the Secretary of the Interior) shall, not later than 45 days after receiving information from the applicant relating to the identification of properties which will be affected by the project for which the application is made and which may meet the criteria established by the Secretary of the Interior for inclusion on the National Register of Historic Places (together with documentation relating to such inclusion), submit his or her comments, together with such other information considered necessary by the officer, to the applicant concerning such properties; and

(2) the Secretary of the Interior shall, not later than 45 days after receiving from the applicant the information described in paragraph (1) and the comments submitted to the applicant in accordance with paragraph (1), make a determination as to whether any of the properties affected by the project for which the application is made is eligible for inclusion on the National Register of Historic Places.

(c) The Advisory Council on Historic Preservation shall prescribe regulations providing for expeditious action by the Council in making its comments under section 106 of the Act referred to in subsection (a)(1) in the case of properties which are included on, or eligible for inclusion on, the National Register of Historic Places and which are affected by a project for which an application is made under section 119.

ADDITIONAL PROVISIONS OF THE HOUSING AND COMMUNITY DEVELOPMENT AMENDMENTS OF 1981[1]

Sec. 303 * * *

[1] See 1981 CCH Current Law for full text of law.

(b) In fiscal years 1982, 1983, and 1984, the Secretary may waive the limitation on the amount of funds which may be used for public services activities under section 105(a)(8) of the Housing and Community Development Act of 1974, as amended by this Act, in the case of a unit of general local government which, during fiscal year 1981, allocated more than 10 per centum of funds received under title I of the Housing and Community Development Act of 1974 for such activities.

* * *

Sec. 307.(a) Any amounts appropriated for any fiscal year before fiscal year 1982 in a Department of Housing and Urban Development — Independent Agencies Appropriation Act or a Supplemental Appropriation Act under the head "Community Development Grants" which are or become available for obligation on or after October 1, 1981, shall remain available as provided by law, and shall be used in accordance with the following:

(1) funds authorized for use under section 106(b) of the Housing and Community Development Act of 1974 ("such Act") before October 1, 1981, shall be available for use as provided by section 106(c) of such Act as amended by this Act;

(2) funds authorized for use under section 107 of such Act before October 1, 1981, shall be available for use as provided by section 107(a) of such Act as amended by this Act; and

(3) funds authorized for use under section 106(c) or (e) of such Act before October 1, 1981, shall be available for use as provided by section 106(d)(2)(A) of such Act as amended by this Act.

(b) Any grant or loan which, prior to the effective date of any provision of this part, was obligated and governed by any authority amended by any provision of this part shall continue to be governed by the provisions of such authority as they existed immediately before such effective date.

* * * *

Sec. 315. Not later than 270 days after the date of enactment of this Act, the Secretary of Housing and Urban Development shall report to the Congress on administrative and legislative steps that can be taken to —

(1) require all grantees to concentrate their block grant funds in distressed geographic areas small enough so that visible improvements can be achieved in a reasonable time period and to ensure that claimed benefits to low- and moderate-income persons are, in actuality, occurring;

(2) reduce the broad list of activities currently eligible so that funds can be focused on those activities which meet the cities' most urgent revitalization needs;

(3) develop overall income eligibility requirements for recipients of block grant supported rehabilitation; and

(4) limit eligible rehabilitation work to that which is essential to restore the housing unit to a decent, safe, and sanitary or energy efficient condition, specifically prohibiting nonessential and luxury items, so that more homes needing basic repairs can be rehabilitated.

PART 42—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

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relocation assistance, including the conditions of eligibility therefor; and

(c) Make available to affected persons the acquisition information statement (described at § 42.105(c)) and the relocation information statement(s) (described at § 42.205(a)(4)). There is to be no charge for the brochures.

§ 42.11 Expediting payments to owners and displaced persons.

(a) *General.* The State agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support his claim. Payment for a satisfactory claim shall be made within 30 days following receipt of sufficient documentation to support the claim.

(b) *Advance relocation payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the State agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

§ 42.13 Notice of denial of claim.

If the State agency denies the eligibility of a claimant for a payment under § 42.119 or § 42.123, or any relocation payment under this part, or disapproves the full amount claimed or refuses to consider the claim on its merits because of untimely filing or any other ground, the State agency shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures and time limitations for appealing that determination under Subpart J (Appeals).

§ 42.15 HUD monitoring and corrective action by State agency.

(a) *General.* HUD will monitor State agency compliance with the regulations in this part. The State agency shall take whatever corrective action is determined by HUD to be necessary to comply with these regulations. HUD may also apply sanctions in accordance with applicable program regulations.

(b) *No Payment or Underpayment.* Whenever HUD determines that the State agency has failed to provide the full amount of a payment required under these regulations, the State agency shall promptly make the payment as specified by HUD.

(c) *Remedies for substandard replacement housing.* Whenever a displaced person has relocated to substandard housing because required payments, housing referrals, property inspection, or other services were not offered in accordance with the regulations in this part, the State agency shall promptly take whatever steps are appropriate and shall bear whatever reasonable costs are necessary to—

(1) Enable the displaced person to relocate to a comparable replacement dwelling (defined at § 42.45) or a decent, safe, and sanitary dwelling of his choice; or

(2) Ensure the repair or rehabilitation of the replacement dwelling occupied by the displaced person to the extent necessary to correct deficiencies which would not be present if the State agency had met its obligations under the regulations in this part. The State agency is not required to remedy housing deficiencies which it can demonstrate were caused after the displaced person occupied the replacement dwelling.

§ 42.17 Confidentiality of records.

Records maintained by State agencies in accordance with the provisions of this part are confidential and are not to be treated as public information, unless State law provides otherwise. Only authorized staff of the State agency or HUD shall have access to them. However, upon the written request of an affected person, the State agency shall give him or his designated representative the opportunity to inspect and copy during normal business hours all pertinent records and files, except materials which the State agency determines should not be disclosed to the person for reasons of confidentiality.

§ 42.19 Manner of notices.

Each notice which the State agency is required to provide to a property owner or occupant under these regulations shall be personally served, receipt documented, or sent by certified or registered first-class mail, return receipt requested. Each notice shall be written in plain understandable language. Recipients who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 42.21 Waiver of regulations.

(a) *State agency.* Any time limit specified for the filing of a claim or an appeal under the regulations in this part may, on a case-by-case basis, be extended by the State agency. However, the State agency may not waive the one-year purchase and occupancy requirement specified at § 42.401(a)(2).

(b) *HUD.* HUD may waive any requirement of the regulations in this part that is not required by law. Any request for a HUD waiver shall be submitted to the HUD Area Office serving the State agency and shall be justified on a case-by-case basis.

§ 42.23 Waiver of rights by owner.

(a) *General.* Nothing in these regulations shall prevent a fully informed owner of real property from voluntarily waiving any of his rights under the regulations in this part. Waivers must be in conformance with pertinent provisions of this section.

(b) *Waiver of acquisition compensation.* Nothing in these regulations shall prevent a person from donating real property or any of the compensation payable for such real property, if prior to the donation—

(1) The State agency informs the owner in writing as to the amount it has established as just compensation for the real property as described at § 42.111; and

(2) The owner indicates in writing that although he understands that he cannot be required to donate the property or sell it to the State agency at less than the amount determined to be just compensation, he voluntarily agrees to do so.

(c) *Waiver of relocation payments.* An owner-occupant may waive his right to a relocation payment by refusing to file a claim for such payment. If an owner-occupant desires to waive any of his rights to a relocation payment as an agreed-upon condition of the acquisition of the property, the State agency may acquire the real property without offering the relocation payment to the owner-occupant, if—

(1) The State agency informs the owner in writing prior to the sale that the displacement is subject to the Uniform Act and that the owner cannot be required to sell the property to the State agency unless it offers the relocation assistance prescribed by the Uniform Act. The relocation assistance to be waived shall be generally described;

(2) The owner provides the State agency with a written statement, in a format prescribed by HUD, that indicates that he understands that he cannot be required to sell the property without being offered such assistance, but he voluntarily agrees to do so; and

(3) The State agency obtains HUD Area Office approval before proceeding with the acquisition. The HUD approval shall be on a case-by-case basis or in accordance with specified procedures approved for a specified program or

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Authority.—Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

General Policies and Instructions

§ 42.1 Purpose.

The purpose of the regulations in this part is to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et. seq.), in accordance with the following objectives—

(a) To insure that owners of real property to be acquired for HUD-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal land acquisition; and

(b) To insure that persons displaced as a result of HUD-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

§ 42.3 Supersedure of regulations.

Except as provided at § 42.305(d), these regulations supersede the regulations formerly appearing in this part. However, any acquisition of property or displacement of a person occuring prior to the effective date of these regulations shall continue to be governed by the regulations at 24 CFR Part 42 in effect at the time of the acquisition or displacement.

§ 42.5 Assurances with respect to acquisition and displacement.

HUD will not approve any project which may result in the acquisition of real property, or in the displacement of any person, until the State agency submits satisfactory written assurances that, in accordance with the Uniform Act, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.) and HUD implementing regulations at 24 CFR Part 1, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et. seq.), and Executive Order 11063, it will—

(a) Carry out the policies and procedures of this part in a manner that insures that the acquisition and relocation processes do not result in different or separate treatment to persons on account of race, color, religion, sex, national origin, or source of income;

(b) Assure that, within a reasonable period of time prior to displacement, comparable replacement dwellings (defined at § 42.45) will be available to all displaced families and individuals and that the range of choices offered to such persons will not very on account of their race, color, religion, sex, national origin, or source of income;

(c) Carry out relocation services in a manner that will promote maximum choice in housing, that will promote lessening of racial, ethnic and economic concentrations, and that will facilitate desegregation and racially inclusive patterns of occupancy and use of public and private facilities; and

(d) Inform affected persons of their rights under the policies and procedures set forth under the regulations in this part, including their rights under Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968.

§ 42.7 No duplication of payments.

No persons shall receive any compensation under the regulations in this part that would have substantially the same purpose or effect as compensation which he receives under the State law of eminent domain and which is part of the cost of the project.

§ 42.9 Information at public hearings.

If real property acquisition or displacement for a project is discussed at a public hearing, the State agency shall—

(a) Indicate that just compensate will be offered for real property to be acquired for the project and that related incidental expenses (described at § 42.119) will be paid;

(b) Generally describe available relocation payments and other

project. Approval on a program or project basis, however, shall be limited to one-year periods, which may be renewed by the Area Manager upon request. A request for HUD approval shall describe the program and contain enough information to enable the HUD Area Office to determine that the owner-occupant's waiver is voluntary. The request shall include the State agency's certification that the property to be acquired is not part of a site which has already been designated or planned for public acquisition that would be carried out in the foreseeable future if the voluntary offer is not made.

Definitions

§ 42.40 Applicability of definitions.

Except where otherwise noted, the definitions appearing in this Subpart A apply to the regulations in this part.

§ 42.41 Acquired dwelling.

The term "acquired dwelling" means the dwelling acquired or deemed to be acquired for the project (defined at § 42.79).

§ 42.43 Business.

The term "business" means any lawful activity, except a nonprofit organization or a farm operation, that is—

(a) Conducted primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(b) Conducted primarily for the sale of services to the public; or

(c) Solely for the purpose of Subpart D of these regulations, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the project.

§ 42.45 Comparable replacement dwelling.

The term "comparable replacement dwelling" means a dwelling that meets the criteria of this section. A comparable replacement dwelling shall be—

(a) Decent, safe, and sanitary as described in § 42.47;

(b) Functionally equivalent to and substantially the same as the acquired dwelling with respect to the number of rooms and area of living space (but not excluding new construction nor excluding larger dwellings necessary to comply with the decent, safe, and sanitary criteria of § 42.47);

(c) Demonstrated to be available to all persons regardless of race, color, religion, sex, or national origin in a manner consistent with the requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and available without discrimination based on source of income;

(d) In an area not subjected to unreasonable adverse environmental conditions from either natural or man-made sources and in an area not generally less desirable than that of the acquired dwelling with respect to public utilities and public and commercial facilities;

(e) Reasonably accessible to the place of employment of the displaced person or, if unemployed (but employable), reasonably accessible to sources of employment;

(f) Available at a rental or purchase price within the ability-to-pay of the displaced person. A replacement dwelling shall be considered within the ability-to-pay of the displaced person if, after he receives a replacement housing payment and any available housing assistance payments, his new monthly housing cost (defined at § 42.67) for the replacement dwelling does not exceed—

(1) Twenty-five (25) percent of the monthly gross income of all adult members of the household, including supplemental income payments received from public agencies. If the person's monthly income pattern is irregular, the State agency shall base its determination of average gross monthly income on the period of time, actual and/or projected, that most fairly and equitably represents the person's ability-to-pay; or

(2) In the case of a student or other dependent as described at § 42.453(c), his monthly housing cost (defined at § 42.67) for the acquired dwelling; and

(g) Actually available to the displaced person on the private market. However, in the case of a tenant who is displaced from a government owned or subsidized dwelling and who elects to rent (rather than purchase) a replacement dwelling, the comparable replacement dwelling(s) may be similarly government owned or subsidized.

§ 42.47 Decent, safe, and sanitary dwelling.

(a) *General.* The term "decent, safe, and sanitary dwelling" means a dwelling which—

(1) Meets applicable local housing and occupancy codes;

(2) Is structurally sound, clean, weathertight and in good repair;

(3) Has an adequate and safe electrical wiring system for lighting and other electrical services;

(4) Meets the requirements of the HUD lead-based paint regulations (24 CFR Part 35) issued under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.). If the State agency determines that a replacement housing payment may have to be denied because the replacement dwelling does not meet this provision, the State agency shall notify HUD at least 15 days in advance of the denial. The notification shall indicate the efforts made to obtain compliance with this provision;

(5) In the case of a physically handicapped person, is free of any architectural barriers. To the extent that standards prescribed by the American National Standards Institute, Inc., in publication ANSI A117.1–1961(R 1971), are pertinent, this provision will be considered met if it meets those standards;

(6) Has heating as required by climatic conditions;

(7) Has habitable sleeping area that is adequately ventilated and sufficient to accommodate the occupants;

(8) Has (or, if not a housekeeping unit, has access to) a separate well-lighted and ventilated bathroom, affording privacy to the user, that contains a sink and bathtub or shower stall, properly connected to hot and cold water, and a flush toilet, all in good working order and properly connected to a sewage drainage system; and

(9) In the case of a housekeeping dwelling, has (i) a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and a refrigerator, and (ii) adequate living area.

(b) *Section 8 housing.* Any existing replacement dwelling, which is assisted under the section 8 housing assistance payments program (see § 42.61(c)) and which is found to meet the section 8 housing quality standards described at § 882.109 of this Title, shall be considered to be a decent, safe, and sanitary dwelling under the regulations in this Part.

§ 42.49 Displaced person.

(a) *General.* The term "displaced person" means any person (defined at § 42.75) who moves from the real property or moves his personal property from the real property—

(1) As a result of the State agency's acquisition of such real property in whole or in part for the project (defined at § 42.79); or

(2) As a result of the written order from the acquiring State agency to vacate such real property for the project; or

(3) As a result of the State agency's acquisition of, or written order to vacate, other real property on which he conducts a business, farm operation, or nonprofit organization, for the project. However, eligibility as a displaced person under this paragraph (a)(3) applies only for purposes of obtaining relocation assistance advisory services (described at § 42.211) and moving expenses under Subpart D or E.

(b) *Displacement for code enforcement, demolition, or rehabilitation under certain programs.* If a person moves as a direct result of code enforcement, demolition, or rehabilitation under the urban renewal, neighborhood development, code enforcement, model cities, demolition or interim assistance programs (see paragraphs (j), (k), (o), (r), and (s) of § 42.61), he is deemed to have been displaced as a result of the State agency's acquisition and to be a displaced person under these regulations.

(1) In the case of a displacement as a result of code enforcement or demolition, the State agency must determine that the code enforcement or demolition is in accordance with the approved plan for the project and cannot reasonably be undertaken without the vacating of the real property (other than for a temporary period in accordance with § 42.49(d)(7) or § 42.207(a)(3)). As soon as feasible, the State agency, shall issue a written notice to vacate to each person occupying the real property.

(2) In the case of rehabilitation, the State agency shall (1) enter into a written agreement with the owner of the real property under which the rehabilitation activities will be undertaken in accordance with HUD policies and requirements and the approved plan for the project, (2) determine that such activities cannot be undertaken without the vacating of the real property (other than for a temporary period in accordance with § 42.49(d)(5) or § 42.207(a)(3)), and (3) issue a written notice to vacate to each person occupying the real property.

(c) *Notice of displacement.* If a person moves or moves his personal property on or after the effective date of a notice of displacement issued to him as described at § 42.205 (a) or (b), he is considered to have been displaced as a result of the State agency's acquisition and to be a displaced person under these regulations.

(d) *Persons not displaced.* This paragraph contains a nonexclusive listing of persons not displaced. A person is not considered to have been displaced as a result of acquisition or an order to vacate the real property for the project and is therefore not a displaced person if—

(1) He moves before the effective date of the notice of displacement issued as described at § 42.205 (a) or (b); or

(2) He initially enters into occupancy of the property after the date of its acquisition for the project, and, prior to occupancy, he is notified in writing that he will not be eligible for relocation payments or other assistance under the Uniform Act or HUD regulations; or

(3) He is a tenant occupying a dwelling and has been properly issued a notice of right to continue in occupancy (described at § 42.207); or

(4) He begins his move after receiving a notice of the determination not to acquire the property (described at § 42.117), unless he has been issued a notice of displacement (described at § 42.205) which has not been cancelled; or

(5) He is an owner-occupant who voluntarily agrees to move for a temporary period in order to carry out the rehabilitation of the real property, and the State agency does not acquire the property or require the owner to move from the property; or

(6) He retains a life estate interest in the real property giving him the right to continue occupancy for the remainder of his life; or

(7) His relocation is required in order to permit fumigation or other code enforcement work and is limited to a temporary period not to exceed five calendar days.

§ 42.51 Dwelling.

The term "dwelling" means the place of permanent or customary and usual residence of a person, including a single-family house, a single-family unit in a two-family, multi-family or multi-purpose property, a unit of a condominium or cooperative housing project, a nonhousekeeping unit, a mobile home, or any other residential unit.

§ 42.53 Fair market rent.

The term "fair market rent" means the charge being paid for the unsubsidized use of similar or equivalent real property in similar areas.

§ 42.55 Fair market value.

The term "fair market value" means the value recognized under applicable eminent domain law as the appropriate measure of consideration for the taking of the real property.

§ 42.57 Farm operation.

The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

§ 42.59 Federal agency.

The term "Federal Agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, and the Architect of the Capitol, the Federal Reserve Bank and branches thereof.

§ 42.61 Federal financial assistance.

The term "Federal financial assistance" means any grant, loan, or contribution, except a Federal guarantee or insurance, made by HUD to a State agency, including the following:

(a) A community development block grant under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301);

(b) A loan or annual contribution made in connection with a low-income public housing project under the U.S. Housing Act of 1937 (42 U.S.C. 1401 et seq.);

(c) Assistance payments under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f et seq.);

(d) A loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(e) Assistance payments under section 235 or interest reduction payments under section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1);

(f) Interest reduction payments under section 221(d)(3) (BMIR) of the National Housing Act (12 U.S.C. 1715–1);

(g) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

(h) A grant under section 713(a) or loan under section 714(a) of Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C. 4514 and 4515) to assist in financing a new community development program;

(i) A loan or grant to assist an eductional institution in construction of housing or other educational facilities under Title I of the Housing Act of 1950 (12 U.S.C. 1749);

(j) A grant or loan for an urban renewal project or neighborhood development program under Title I of the Housing Act of 1949 (42 U.S.C. 1450).

(k) A grant for concentrated code enforcement and public improvements under section 117 of the Housing Act of 1949 (42 U.S.C. 1468);

(l) A water and sewer facilities grant under Title VII of the Housing and Urban Development Act of 1965 (42 U.S.C. 3101);

(m) A grant for open-space use or for a historic preservation or urban beautification project under Title VII of the Housing Act of 1961 (42 U.S.C. 1500);

(n) A grant for a neighborhood facilities program under Title VII of the Housing and Urban Development Act of 1965 (42 U.S.C. 3101);

(o) A grant for the purpose of carrying out a comprehensive city demonstration program under Title I of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3301);

(p) A public facility loan under Title II of the Housing Amendments of 1955 (42 U.S.C. 1491);

(q) A grant for advance acquisition of land under Title VII of the Housing and Urban Development Act of 1965 (42 U.S.C. 3101);

(r) A grant for the demolition of unsafe structures under Section 116 of the Housing Act of 1949 (42 U.S.C. 1467); and

(s) A grant for interim assistance to slums or blighted areas under Section 118 of the Housing and Urban Development Act of 1949 (42 U.S.C. 1468(a)).

§ 42.63 HUD.

The term "HUD" means the Department of Housing and Urban Development and more particularly, the Secretary of Housing and Urban Development or an officer or employee duly authorized to perform the functions of the Secretary.

§ 42.65 Initiation of negotiations.

(a) *General.* Except as provided in paragraphs (b), (c) and (d) of this section, the term "initiation of negotiation" means the initial written offer by the State agency to the owner to purchase real property for the project for the amount determined to be just compensation, or the date of HUD recognition of the project (see § 42.79(b)), whichever is later.

(b) *Low-income public housing program.* Unless a different date is specified in applicable program regulations at 24 CFR Part 841, the term "initiation of negotiations" means:

(1) For new construction or acquisition under the turnkey method or acquisition of a HUD-owned property, the date of HUD execution of the applicable annual contributions contract, or the date of tentative site approval, if that is later; and

(2) For all other public housing, as described in paragraph (a) of this section.

(c) *Rehabilitation.* Whenever a rehabilitation activity is subject to these regulations as described at § 42.49(b) and there is no State agency acquisition, the execution of the written agreement between the State agency and the owner of the property under which the rehabilitation will be undertaken is deemed to be the "initiation of negotiations."

(d) *Code enforcement or demolition.* Whenever a code enforcement or demolition activity is subject to these regulations as described at § 42.49(b) and there is no State agency acquisition, the State agency's notice to vacate the real property is deemed to be the "initiation of negotiations."

§ 42.67 Monthly housing cost.

(a) *General.* The term "monthly housing cost" for a dwelling that is rented means the average monthly cost for rent and utility charges (defined at § 42.91). The term "monthly housing cost" for a replacement dwelling purchased by a displaced person means the average monthly cost for all mortgage payments, real property taxes, and reasonable utility charges.

(b) *Computation of monthly housing cost for replacement dwelling.* A person's monthly housing cost for a replacement dwelling shall be a projected amount that includes one-twelfth of the estimated reasonable annual cost for utility charges.

§ 42.69 Mortgage.

The term "mortgage" means a lien commonly given to secure an advance on, or the unpaid purchase price of, real property under the laws of the State in which the real property is located, together with any credit instrument(s) secured thereby.

§ 42.71 Nonprofit organization.

The term "nonprofit organization" means a corporation, partnership, individual, or other public or private entity that is engaged in a lawful business, professional, or instructional activity on a nonprofit basis and that has established its nonprofit status under applicable Federal or State law.

§ 42.73 Owner.

The term "owner" means any person who hold any of the following interests in real property to be acquired for the project—

(a) Fee title, a life estate, a 99-year lease, or a lease, including options for extensions, with at least 50 years to run from the date of acquisition; or

(b) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(c) a contract to purchase any of the interests or estates described in paragraphs (a) or (b) of this section; or

(d) Any interest which in the judgment of the State agency or HUD warrants consideration as ownership.

§ 42.75 Person.

The term "person" means any individual, family partnership, corporation, or association. For purposes of Subparts E, F, G, H, and I, two or more individuals, whether or not they are members of the same family, who live together in a single family dwelling and are displaced from such dwelling, shall be regarded as one person, unless the State agency determines that separate tenancies exist.

§ 42.77 Personal property.

The term "personal property" means tangible property located on the real property that is not compensated for (other than for moving expenses) in the real property acquisition.

§ 42.79 Project.

(a) *General.* The term "project" means any undertaking which receives Federal financial assistance from HUD as defined at § 42.61.

(b) *Federal recognition.* To be subject to the regulations in this part, the real property acquisition or displacement must take place after the HUD-assisted undertaking is officially recognized as a project. Except as provided in paragraphs (c) through (f), HUD recognition of the project occurs on the earlier of (1) the date of the execution of the applicable contract for Federal financial assistance, or (2) the date of HUD approval of a budget for project execution activities, if the pertinent contract for Federal financial assistance is later executed.

(c) *Community development block grant program.* (1) Any acquisition of real property by a State agency and any displacement resulting from the acquisition of real property by a State agency shall be considered to be for an activity assisted under the community development block grant program (see § 42.61(a)) and to be subject to the regulations in this part if the acquisition or displacement occurs on or after the date of the submission of the application requesting Federal financial assistance which is granted for an activity for which the acquisition has been or will be undertaken. However, if the State agency determines that an acquisition or displacement was not carried out for an assisted activity, and the HUD Area Office serving the locality concurs in that determination, such acquisition or displacement shall not be subject to these regulations. The State agency's request for HUD concurrence shall include its certification that at the time of the acquisition it did not intend to use the property for an assisted activity and appropriate documentation to establish that fact.

(2) The State agency or HUD may determine that an acquisition prior to submission of an application for financial assistance and any resulting displacement were carried out for an assisted activity and are subject to these regulations. In the absence of such a determination by the State agency or

HUD, any such acquisition or displacement occurring prior to submission of an application shall not be subject to these regulations. The State agency may at any time request a HUD determination as to whether or not such an acquisition and any resulting displacement are considered to be for an assisted activity and to be subject to these regulations. The request shall be submitted to the HUD Area Office and shall include appropriate background documentation.

(3) If the owner or occupant of a property disagrees with the State agency's determination that the Uniform Act and the regulations in this part do not apply to the acquisition of the property by the State agency or to a displacement resulting from the acquisition, he/she may file an appeal under Subpart J (Appeals), whether or not the acquisition or displacement occurs before or after submission of the application for financial assistance. The specific payments and other assistance for which an appeal may be filed are set forth in § 42.703(a). *

(d) *Low-income public housing program.* The date of HUD recognition of a low-income public housing project (see § 42.61(b)) is the date of the annual contributions contract or the date of tentative site approval by HUD, whichever is later, unless a different date is specified in applicable program regulations at 24 CFR Part 841.

(e) *Section 8 housing assistance payments program.* The date of HUD recognition of a project assisted under the Section 8 housing assistance payments program (see § 42.61(c)) is the date HUD notifies the State agency that its final proposal (or only proposal, if pertinent) is approved.

(f) *Model cities program.* (1) Displacement resulting from acquisition in connection with a model cities program (see § 42.61(o)) shall be considered displacement for the project, if it occurs on or after—

(i) The date of the applicable contract for Federal financial assistance for the project; or

(ii) The date approved by HUD for a specific undertaking upon the request of the State agency, if the displacement occurs prior to the approval of the pertinent contract for Federal financial assistance, and such contract for Federal financial assistance is later executed and the comprehensive city demonstration program thereafter identifies the undertaking as one being carried out in connection with such program.

(2) In any case in which a comprehensive city demonstration program is amended to incorporate a displacement causing activity which was carried out prior to the date of such amendment and to recognize the eligibility of persons displaced by reason of any such activity, the displacement shall be considered displacement for the project and the date of displacement for such person shall be considered to be the date on which the comprehensive city demonstration program was amended to include the displacement causing activity.

§ 42.81 Salvage value.

The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

§ 42.83 State.

The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the trust territories of the Pacific Islands, or a political subdivision of any of these jurisdictions.

§ 42.85 State agency.

The term "State agency" means any department, agency or instrumentality of a State or of a political subdivision of a State, or of two or more States, or of two or more political subdivisions of a State or States.

§ 42.87 Tenant.

The term "tenant" means a person who rents or is temporarily in possession of an interest in real property.

§ 42.89 Uniform Act.

The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et. seq.; Pub. L. 91-646).

§ 42.91 Utility charges.

The term "utility charges" means the cost for heat, hot water, lighting, water and sewer, and trash removal.

Supart B—Real Property Acquisition

§ 42.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this Subpart B apply to any State agency acquisiton of real property for a project that occurs on or after the effective date of these regulations, except—

(1) The acquisition of real property which results from a voluntary proposal submitted by the owner in response to a public invitation or solication for offers (The public invitation or solicitation shall indicate that the sale must be on a voluntary basis and that if a mutually satisfactory agreement cannot be reached, the State agency will not acquire the property); and

(2) The acquisition of real property from a State, a State agency, or a Federal agency.

However, the displacement of any person as a result of an acquisition identified in paragraph (a)(1) or (a)(2) of this section is governed by the relocation requirements of the regulations in this part.

(b) *Less-than-fee permanent interests in real property.* The provisions of this subpart apply to acquisitions of a life estate, acquisitions by leasing where the lease term, including option(s) for extension, is fifty years or more, and to any other acquisition for a project of a less-than-fee permanent interest in real property, such as an easement.

(c) *Application of State law.* In acquiring real property for a project, the State agency shall comply with the provisions of §§ 42.103, 42.107, 42.109, 42.111, 42.113, and 42.115 to the extent permitted by State law.

§ 42.103 Basic acquisition policies.

(a) *Expeditious acquisition.* If the State agency determines to acquire real property, it shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Appraisal and invitation to owner.* Before the initiation of negotiations, the State agency shall have the real property appraised and shall assure that the owner or his designated representative is contacted in advance of the appraisal(s) and given an opportunity to accompany each appraiser during the appraiser's inspection of the property. A minimum of one appraisal is required (see also review appraisal requirement at § 42.109).

(c) *Determination and offer of just compensation.* Before the initiation of negotiations, the State agency shall establish an amount which it believes is just compensation for the real property as described at § 42.111. Promptly thereafter, it shall make a written offer to the owner to acquire the property for that amount. If feasible, the written purchase offer shall be given within 90 days after issuance of the preliminary acquisition notice (described at § 42.105). If any real property improvement will have to be removed or will be adversely affected by the completed project, the State agency shall offer to acquire at least the same interest in the improvement as it acquires in the real property on which the improvement is located (see also § 42.115, Acquisition of tenant-owned improvements).

(d) *Basic negotiation procedures.* The State agency shall make reasonable efforts to meet with the owner or his representative and (1) discuss its offer to purchase his property including the basis for the determination of just compensation (see § 42.113) and (2) explain its acquisition policies and procedures including its payment of incidental expenses in accordance with § 42.119. The owner shall be given

reasonable opportunity to present material which he believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase, and the State agency shall consider the owner's presentation.

(e) *Updating determination of just compensation.* If the evidence presented by an owner or a material change in the character or condition of the property indicates the need for new appraisal evidence, or if a significant delay has occurred since the time of the appraisal(s) of the property, the State agency shall have the appraisal(s) updated or obtain new appraisal(s). If the latest appraisal evidence indicates that an increase in the purchase offer is warranted, the State agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(f) *Coercive action.* The State agency shall not advance the time of condemnation, or defer negotiations or condemnation, or the deposit of funds with the court, or take any other coercive action, in order to compel or induce an agreement on the price to be paid for the property.

(g) *Payment before taking possession.* Before requiring an owner to surrender possession of his real property, the State agency shall—

(1) Pay the agreed purchase price to the owner; or

(2) Deposit with the court in the condemnation proceeding, for the benefit of the owner, an amount not less than the State agency's determination of just compensation for the property or the court award of compensation for the property.

(h) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the State agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. For purposes of this Subpart, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of his property and which has little or no utility or value to him.

(i) *Inverse condemnation.* If the State agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

§ 42.105 Preliminary acquisition notice.

As soon as feasible in the acquisition process, but not later than the time at which the owner is invited to accompany the appraiser on the appraiser's inspection of the real property, the State agency shall issue a preliminary acquisition notice to the owner. The notice shall—

(a) Inform the owner of the State agency's interest in acquiring his real property;

(b) Explain that such preliminary acquisition notice is not a notice to vacate and that it does not establish eligibility for relocation payments or other relocation assistance under these regulations; and

(c) Include a copy of either (1) the HUD information brochure, "When a Public Agency Acquires Your Property," or (2) a statement which contains substantially the same information, modified as necessary to conform to the requirements of State law.

§ 42.107 Criteria for appraisals.

(a) *Qualifications of appraisers.* The State agency shall establish criteria for determining the minimum qualifications of appraisers. Appraisal qualifications shall be consistent with the level of difficulty of the appraisal assignment. The State agency shall obtain a signed statement by each appraiser setting forth his appraisal qualifications, and it shall review the experience and education and other qualifications of appraisers and identify and employ only qualified appraisers to perform the appraisals.

(b) *Appraisal standards.* The State agency's appraisals of fair market value shall be based upon nationally recognized appraisal standards and techniques to the extent that such principles are consistent with the concepts of value and the rules on the admissibility of evidence of value under the eminent domain law of the State factors relating to race, color, religion, sex or national origin, or to racial, religious and ethnic identification of neighborhoods are not relevant to the estimation of value and shall not be considered in connection with appraisals of residential real property.

(c) *Documentation.* Appraisal reports must contain sufficient documentation, including supporting valuation data and the appraiser's analyses of that data, to demonstrate the correctness of the appraiser's opinion(s) of value.

(d) *Conflict of interest.* No appraiser shall have any interest, direct or indirect, in the real property which he appraises for the State agency that would in any way conflict with his performance of the appraisal. No appraiser shall act as a negotiator for the State agency or the owner in the acquisition of real property which he has appraised in connection with the project, except that a review appraiser on the staff of the State agency is not precluded from acting as a negotiator for the State agency. Compensation for an appraisal shall not be based on the amount of the valuation

§ 42.109 Review of appraisals.

(a) *Evaluation of appraisals.* If the appraised fair market value of the real property to be acquired exceeds $2,000, the appraisal(s) of the property shall be reviewed by a qualified staff appraiser or independent fee appraiser. The reviewer shall determine the adequacy of the appraiser's supporting data and documentation, the soundness of the appraiser's reasoning and whether the appraisal conforms with recognized appraisal practices. In particular, the reviewer shall determine the correctness of the appraiser's opinion of the fair market value of the property. To the extent appropriate, the reviewer shall require the appraiser to make necessary corrections in his appraisal report. After any necessary corrections are made, the reviewer shall determine the acceptability of the appraisal report.

(b) *Review appraiser's report.* If the review appraiser finds the appraisal report(s) to be acceptable, he shall set forth in a written report his recommendation as to the fair market value of the property. The reviewer's report shall identify the appraisal report(s) reviewed and explain the basis for his recommendation.

§ 42.111 Establishment of just compensation.

(a) *General.* Except where HUD program regulations specify that HUD shall determine just compensation, the State agency shall establish the amount of just compensation to be offered to the owner for the real property. Such amount shall not be less than—

(1) The State agency's review appraiser's recommendations as to the fair market value of the property; or

(2) The fair market value estimate set forth in the agency's approved appraisal, if the property is valued at $2,000 or less and the appraisal is not reviewed by a qualified review appraiser.

(b) *Just compensation for tenant-owned improvements.* If any real property improvement has been identified as being the property of a tenant who has the right to remove it or the obligation to remove it at the expiration of his term, the State agency

shall determine as just compensation for such improvement the greatest of—

(1) The amount which the improvement contributes to the fair market value of the real property (this may be defined as the amount by which the fair market value of the real property with the improvement exceeds the fair market value of the real property without the improvement); or

(2) The depreciated replacement cost of the improvement installed. Depreciation from all sources, including physical deterioration, functional obsolescence, and economic obsolescence, shall be deducted; or

(3) The salvage value of the improvement as defined at § 42.81.

(c) *Influence of projects on just compensation.* To the extent permitted by State law:

(1) In determining just compensation for real property to be acquired, the State agency shall disregard any decrease or increase in the fair market value of the real property, prior to the date of valuation, caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project other than that due to physical deterioration within the reasonable control of the owner; and

(2) In the case of a partial acquisition, just compensation for the part acquired shall be the amount by which the fair market value of the entire property of the owner, disregarding the increase or decrease in value caused by the project, exceeds the fair market value of the remainder, taking into account the increase or decrease caused by the project.

(d) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal off-site, the amount determined to be just compensation for the interest in real property to be acquired from him shall be not less than the amount determined by subtracting the salvage value of the improvements he retains for off-site removal from the amount determined to be just compensation for his entire interest in the real property.

(e) *Payments in excess of just compensation.* Unless prohibited by State law or HUD program regulations, the State agency may pay an owner, as compensation for his real property, an amount in excess of the fair market value of such real property. However, any such determination shall be on a case-by-case basis and a justification shall be included in the applicable case file. Unjustified overpayments may be determined to be ineligible project costs and/or cause for HUD to impose sanctions under applicable program regulations.

§ 42.113 Statement of the basis for the determination of just compensation.

At the time of the initiation of negotiations to acquire the real property, the State agency shall furnish the owner, along with the initial written purchase offer, a written statement of the basis for the determination of just compensation. To the extent permitted by State law, the statement shall include the following—

(a) An accurate description and location identification of the real property and the interest in the real property to be acquired.

(b) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant removable building equipment, which are considered to be part of the real property for which the offer of just compensation is made. To the extent known, the owner of each item of the inventory which is not owned by the owner of the land shall be identified.

(c) A recital of the amount of the offer and a declaration that such amount—

(1) Is the full amount believed by the State agency to be just compensation for the property and is not less than the fair market value of the property as determined on the basis of the appraisal(s);

(2) Disregards any increase or decrease in the fair market value of the property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner; and

(3) Does not reflect any relocation paymentss or other relacation assistance which the owner is entitled to receive.

(d) The recognized definition of the term "fair market value" or equivalent term used in the State in which the real property is located.

(e) A brief explanation of the principal appraisal techniques used in appraising the real property (e.g., market data approach, capitalization of net income approach, and/or replacement cost approach).

(f) In the case of a tenant-owned improvement, the amount determined to be just compensation for the improvement and the basis for such determination as set forth in § 42.111(b) (just compensation for tenant-owned improvements).

(g) If only a portion of a property is to be acquired, an apportionment of the total estimated just compensation for the partial acquisition between—

(1) An amount representing just compensation for the real property to be acquired (the amount considered to be the fair market value of the portion to be acquired as part of the whole property); and

(2) An amount representing any damages and benefits to the remaining portion of the property. A brief description of such damages and benefits shall also be included.

§ 42.115 Acquisition of tenant-owned improvements.

(a) *Improvements considered to be real property.* If any building, structure, fixture, or other improvement would be considered to be real property if it was owned by the owner of the real property on which it is located, it shall be considered to be a real property improvement for purposes of this subpart.

(b) *Offer to acquire.* If any real property improvement has been identified as being the property of a tenant who has the right to remove it or the obligation to remove it at the expiration of his term, the State agency shall furnish the tenant a written offer to acquire such improvement for the amount determined to be just compensation for the improvement as described at § 42.111(b) and a written statement of the basis for its determination as described at § 42.113.

(c) *Special conditions.* No payment shall be made to a tenant for his real property improvements unless—

(1) The tenant, in consideration for the payment, assigns, transfers, and releases to the State agency all his right, title, and interest in the improvement;

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(d) *Right to alternative compensation.* A tenant has the right to reject payment under this section and obtain payment for his real property interests in accordance with other applicable law.

§ 42.117 Notice of determination not to acquire.

If the State agency has issued a preliminary acquisition notice or a firm offer to acquire, and later determines not to acquire the real property, it shall so notify the owner and any person who is occupying the property or has received a preliminary relocation notice (described at § 42.203). The notice shall

be served in writing within 10 days after the determination not to acquire and shall appropriately notify those who will not be eligible for relocation assistance. However, if a notice of displacement (described at § 42.205) has already been issued, it may not be cancelled, unless the person has not yet moved and the State agency agrees to reimburse him for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of displacement.

§ 42.119 Expenses incidental to transfer of title to the State agency.

(a) *Eligible costs.* The State agency shall reimburse the owner for all reasonable expenses he necessarily incurred for—

(1) Recording fees, transfer taxes, documentary stamps, title certificates and other evidence of title, boundary surveys and legal descriptions of the real property, and similar expenses incidential to conveying the real property to the State agency. However, the State agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes and other charges for public services such as water, sewage and trash collection, which are allocable to the period subsequent to the date the State agency obtains title to, or effective possession of the property, whichever is earlier.

(b) *Method of payment.* Whenever possible, the State agency shall pay for costs eligible for reimbursement under this section directly and minimize the need for an owner to pay any such costs from his own finances and then claim reimbursement from the State agency. If the real property is acquired by direct purchase, reimbursement of documented settlement costs shall be made at settlement. If the property is acquired by condemnation, such reimbursement shall be made as soon as possible after the deposit of funds to satisfy the court award.

(c) *Claims after acquisition.* A claim by the owner for reimbursement of settlement costs shall be submitted to the State agency within 6 months after the acquisition of the property or the court award in a condemnation proceeding. However, the State agency may extend this time period.

(d) *Appeals.* An owner who believes that he has been denied the full amount of a payment to which he is entitled under paragraph (a) of this section may appeal that denial under Subpart J (Appeals) of the regulations in this part.

§ 42.121 Statement of settlement cost.

A statement of settlement cost shall be prepared and furnished to the owner at the settlement of the acquistion, or as soon as feasible after the award of the judgment in a condemnation proceeding. The statement shall include an identification of all known incidental costs for which the owner has been reimbursed or may be entitled to reimbursement under § 42.119 (Expenses incidental to transfer of title). The statement shall be dated and certified as true and correct by the closing attorney or other person handling the transaction.

§ 42.123 Certain litigation expenses.

(a) *General.* The State agency shall reimburse the owner of the real property for the owner's reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually and necessarily incurred because of a condemnation proceeding, if—

(1) The final judgment of the court having jurisdiction over the condemnation proceeding is that the State agency cannot acquire the real property by condemnation; or

(2) The condemnation proceeding is abandoned by the State agency other than under an agreed-upon settlement of the proposed acquisition of the property by direct purchase; or

(3) A court of competent jurisdiction renders a judgment in favor of the owner as plaintiff in an inverse condemnation proceeding or the State agency effects a settlement of such proceeding.

(b) *Time for filing claim.* A claim for payment under paragraph (a) of this section shall be submitted within 6 months after final judgment in the condemnation proceeding, or the abandonment of the proceeding by the State agency, whichever is applicable. However, the State agency may extend this time period.

(c) *Documentation of claim.* A claim for payment under paragraph (a) of this section shall be supported by such reasonable documentation as may be required by the State agency.

(d) *Appeals.* Any owner who believes that he has been denied the full amount of a payment to which he is entitled under paragraph (a) of this section may appeal the denial under Subpart J (Appeals) of the regulations in this part.

§ 42.125 Acquisition recordkeeping

The State agency shall maintain a separate acquisition file for each real property acquisition for at least three years after completion of the project, final settlement of the acquisition, or the disposition of the applicable relocation records, whichever is latest. All data shall be readily accessible and available to HUD on request. The State agency shall also maintain a summary list identifying all planned and completed acquisitions for the project. Except as otherwise specified, each separate acquisition file shall include—

(a) A record form indicating the applicable HUD project number, date of project approval, the State agency's parcel number for the real property and the name of each owner and tenant;

(b) A copy of the preliminary acquisition notice (copy of standard brochure not required), and evidence, including date, of receipt by owner;

(c) Evidence that owner was invited to accompany each appraiser on his inspection of the real property;

(d) A copy of any appraisal report, including any review appraiser's report on which the determination of just compensation, was based. However, such appraisal report(s) may be filed separately with an appropriate reference in the acquisition file;

(e) A copy of document establishing just compensation or reference to location of the document;

(f) A copy of the written purchase offer, including all basic terms and conditions, and citation of date of delivery to owner;

(g) A copy of the statement of the basis for the determination of just compensation and citation of date of delivery to owner;

(h) A copy of any purchase agreement, deed, declaration of taking, waiver, or related document involving the conveyance;

(i) A copy of the statement of settlement cost;

(j) Evidence that owner received purchase price; and

(k) A copy of any appeal concerning a payment under § 42.119 or § 42.123, together with a copy of all pertinent determinations and other relevant documentation.

§ 42.127 Effect of these regulations on acquisition.

(a) The provisions of §§ 42.103, 42.107, 42.109, 42.111, 42.113, and 42.115 create no rights or liabilities and shall not affect the validity of any property acquisition by purchase or condemnation.

(b) Nothing in these regulations shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or of damage not in existence immediately prior to January 2, 1971.

Subpart C—General Relocation Requirements

§ 42.201 Purpose and applicability.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this part. The relocation requirements of the regulations in this part apply to the relocation of any displaced person as defined at § 42.49.

§ 42.203 Preliminary relocation notice.

Under certain HUD-assisted programs, the notice of displacement (described at § 42.205) or notice of right to continue in occupancy (described at § 42.207) is not issued within thirty days after the initiation of negotiations. In these programs (see § 42.205(c)), the State agency shall, within 30 days after the initiation of negotiations, issue a preliminary relocation notice to each occupant of the property. The notice shall—

(a) Identify the project;

(b) Insofar as possible, inform the person whether or not he will be required to relocate permanently as a result of the project;

(c) Explain that the preliminary relocation notice is not a notice to vacate the real property and that the person will not be entitled to relocation payments or other relocation assistance under the Uniform Act, unless he is occupying the property on the effective date of a notice of displacement that has been issued to him;

(d) Indicate that if the person remains in the property until (*specify eligibility action*), he may become eligible for relocation payments and other assistance or be issued a notice of right to continue in occupancy, whichever the case may be. The provisions of the notice or notices to which reference is made shall be generally described; and

(e) Generally describe the relocation payments and other assistance for which the person may become eligible, including the maximum allowable dollar amounts and basic conditions of eligibility for the payments.

§ 42.205 Notice of displacement.

(a) *General.* The State agency shall issue a written notice of displacement to each person to be displaced (see definition of displaced person at § 42.49). Except as provided in paragraph (c) of this section, the notice shall be issued not later than thirty (30) days after the initiation of negotiations and shall be effective on the date of the initiation of negotiations. The notice shall—

(1) Identify the project and inform the person of his eligibility for relocation payments and other assistance and the effective date of that eligibility;

(2) Generally describe the relocation payment(s) for which he may be eligible and indicate the estimated amount or range of such payment(s), the basis of the estimate for any replacement housing payment, the basic conditions of eligibility, and the procedures for obtaining the payment(s);

(3) Inform him that he will be given other help (e.g., housing referrals) to facilitate the move;

(4) Include a copy of either (i) the applicable HUD information brochure(s), "Relocation Assistance to Displaced Homeowners," "Relocation Assistance to Displaced Tenants," or "Relocation Assistance to Displaced Businesses, Farms, and Nonprofit Organizations," or (ii) statement(s) containing substantially the same information, modified as necessary to conform to the requirements of State law.

(b) *Automatic notice of displacement.* A person shall be deemed to have been issued a notice of displacement and to be eligible for relocation payments and other assistance under these regulations, if—

(1) He is not issued a written notice of displacement under this section or a notice of right to continue in occupancy (described at § 42.207) within thirty (30) days after the initiation of negotiations, or, if applicable, within the period described at paragraph (c) of this section. The automatic notice of displacement shall be effective on the initiation of negotiations (or the date described at paragraph (c) of this section). As soon as possible after discovery of its error, the State agency shall issue the person a written notice of displacement. If, after receiving the written notice of displacement, the tenant indicates a preference to continue in occupancy, the State agency may enter into a voluntary agreement under which the tenant waives his relocation rights as a condition of receiving a notice of right to continue in occupancy. Upon execution of such agreement, the automatic notice of displacement is cancelled; or

(2) He is a tenant who has been issued a notice of right to continue in occupancy (described at § 42.207), but the State agency fails to meet one or more of its commitments to him under that notice. The tenant is entitled to the full amount of the relocation payments and other assistance provided under these regulations (not a prorated amount), and the State agency shall immediately acknowledge this right by issuing to him a written notice of displacement, effective on the date of the violation. If the State agency does not issue the written notice of displacement, the person must file an appeal under Subpart J (Appeals) within six months after (i) his permanent move from the property, or (ii) the end of the 4-year occupancy period, whichever is earlier.

(c) *Modification of eligibility date.* For certain HUD-assisted projects, applicable program regulations may establish a different time period for the issuance of a notice of displacement or notice of right to continue in occupancy. In the case of a Section 8 substantial rehabilitation project in a neighborhood strategies area (see 24 CFR Part 881, Subpart C), the notice of displacement or notice of right to continue in occupancy shall be issued within 60 days after HUD notification of the approval of the proposal for the project. The notice of displacement under paragraph (a) or (b)(1) of this section shall be effective on the date of the HUD notification of the approval of the proposal for the project.

§ 42.207 Notice of right to continue in occupancy.

(a) *General.* If a tenant of a dwelling (not an owner-occupant) is permitted to continue in occupancy of a dwelling in accordance with the provisions of this section, he is not considered a displaced person under the Uniform Act or the regulations in this part. Within thirty (30) days after the initiation of negotiations (or by the date described in § 42.205(c)), the State agency shall issue a written notice to each residential tenant who will not be displaced for the project. The notice shall indicate the nature of the project and that, if the property is acquired and/or rehabilitation is initiated, as the case may be, he will be permitted to continue in occupancy under the following conditions—

(1) The tenant shall have the right to lease and occupy a decent, safe, and sanitary dwelling which is either his current dwelling or a comparable replacement dwelling located within the same building or nearby building

located on the same site, for a continuous period of at least four years. The four-year period shall begin on the date of acquisition, or the date the dwelling is placed in decent, safe, and sanitary condition, or the termination date of any required temporary relocation, whichever is latest. The conditions of occupancy imposed in the lease shall be reasonable and, in the case of a low-income public housing project (see § 42.61(b)), shall conform to the requirements of 24 CFR Part 866.

(2) The tenant's monthly housing cost (defined at § 42.67) for the four-year period shall not exceed twenty-five percent of his gross income, or the fair market rent for the dwelling, whichever is lesser.

(3) The tenant shall not be required to move from his dwelling, other than for cause (see § 42.219), unless the move is necessary to carry out the project. If any such move is required, (i) not more than one temporary relocation by the tenant shall be required, (ii) the temporary relocation, if any, shall not exceed twelve months in duration, (iii) a decent, safe, and sanitary dwelling in a location not generally less desirable than that of the acquired dwelling with respect to public and commercial facilities and the occupant's place of employment shall be available to the tenant for the period of any temporary relocation, and (iv) the State agency shall pay actual reasonable out-of-pocket expenses, including all moving costs and any increase in monthly housing cost (defined at § 42.67), incurred by the tenant in connection with the move(s) and/or temporary relocation; and

(4) The provisions of § 42.205(b)(2) shall be explained along with a brief description of the relocation assistance to which the tenant would be entitled, if one or more of the commitments to him under this notice is not met.

(b) *Special conditions.* (1) The State agency shall take such steps as may be necessary to insure that no person who continues in occupancy under the provisions of this section is subjected to an unreasonable change in the character of his immediate environment without being given the opportunity to move and qualify for relocation assistance as a displaced person. Special attention shall be given to the needs of the elderly, handicapped persons, and tenants with special problems.

(2) In determining whether or not temporary relocation is necessary to facilitate the rehabilitation, the State agency must consider any hardships likely to result if the person occupies the property during the rehabilitation.

(c) *Notice prohibited.* The State agency shall not issue a notice of right to continue in occupancy of a dwelling that is to be demolished for the project or altered for the project in such a way that the tenant would be required to vacate the dwelling after the 4-year guarantee period expired.

(d) *Tenant moves prior to notice.* If a tenant moves from the real property before he is issued a notice of right to continue in occupancy (but after the initiation of negotiations), the State agency shall not issue him a notice of right to continue in occupancy, unless it agrees to reimburse the tenant for any expenses incurred to satisfy any binding contractual obligations securing the dwelling to which he moved and all reasonable out-of-pocket expenses for the move to that dwelling and his return move to the acquired dwelling. The tenant shall be informed of this agreement.

(e) *Recordkeeping.* The State agency shall maintain a separate file for each tenant issued a notice in accordance with this section. All data shall be readily available to HUD on request. Each file shall be retained for at least three years after the termination of the four-year guarantee period and shall contain—

(1) A copy of the notice of right to continue in occupancy issued to the tenant;

(2) Documentation of the determination(s) of the rent to be paid by the tenant during the four-year guarantee period;

(3) If a temporary relocation is required, evidence of compliance with paragraph (a)(3) of this section;

(4) An inspection certificate indicating that the dwelling was decent, safe, and sanitary at the beginning of the four-year period and the date that period began; and

(5) A copy of any appeal filed in accordance with Subpart J and all related determinations.

§ 42.209 Availability of comparable replacement dwellings prior to displacement.

(a) *General.* This section applies only to persons to be displaced from a dwelling. The State agency shall not require a person to move from his dwelling, unless he has been given a reasonable choice of opportunities to relocate to a comparable replacement dwelling (defined at § 42.45). If a person must be required to move after he refuses without justification to accept any of the opportunities provided to him to enable him to relocate to a comparable replacement dwelling, the State agency shall include in the case file a full justification for its action. The justification shall describe in full detail the specific opportunities and assistance (see § 42.211) provided to the person prior to his displacement to enable him to relocate to a comparable replacement dwelling.

(b) *Circumstances permitting waiver.* The provisions of paragraph (a) of this section implement Section 205(c)(3) of the Uniform Act. These provisions will not be waived, unless it is necessary for the State agency to require a person to move because of—

(1) A major disaster as defined in Section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A Presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Request for waiver.* If the State agency believes that a waiver of the provisions of paragraph (a) of this section is necessary, it shall request HUD Area Office approval for the waiver as soon as possible. The request to HUD shall include—

(1) An explanation of the necessity for the waiver, including a description of the emergency causing the need for the waiver;

(2) An estimate of the duration of any resulting temporary relocation; and

(3) A copy of the notice sent or to be sent in accordance with § 42.209(d)(2)(iv).

(d) *Basic rules when emergency move takes place.* (1) If a person moves from the property on or after the effective date of a notice of displacement that has been issued to him as described at § 42.205(a) or (b), he is eligible for the relocation payments and other assistance prescribed by the regulations in this part. That eligibility is not affected when the immediate cause of the move is an emergency (e.g., a fire).

(2) Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the 18-month period within which he must file any claim for a relocation payment (see § 42.221(b)) and the one-year period within which he must obtain and occupy a replacement dwelling in order to be eligible for a replacement housing payment (see § 42.401(a)(2) and § 42.451(c)) shall begin on the date the person moves from the temporarily-occupied dwelling. The State agency shall—

(i) Assure that a decent, safe, and sanitary dwelling is made available to the person for the period of the temporary relocation;

(ii) Assure that, at the earliest possible time, but in no event later than 12 months after the date of such move the person is given reasonable opportunities to relocate permanently to a comparable replacement dwelling in accordance with the regulations in this part;

(iii) Pay actual reasonable out-of-pocket expenses, including any moving costs and any increase in monthly housing cost (defined at § 42.67), incurred in connection with the temporary relocation; and

(iv) Promptly furnish a written notice to the person informing him of the requirements of this paragraph (d) and that the relocation payments and assistance to which he is entitled under these regulations will not be affected by any payments and other assistance provided in connection with the temporary relocation. A copy of the notice shall be placed in the relocation case file.

§ 42.211 Relocation assistance advisory services.

(a) *General.* The State agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527), and offers the services described in paragraph (b) of this section and § 42.213. If the State agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer such services to such person.

(b) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to—

(1) Personally interview each person to be displaced, determine his relocation needs and preferences, and explain to him the relocation payments and other assistance for which he may be eligible, the related eligibility requirements, and the procedures for obtaining such payments and assistance;

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings and comparable commercial and farm properties and locations, as the case may be. If any referral is made to a decent, safe, and sanitary dwelling which is not a comparable replacement dwelling or to a comparable replacement dwelling for which the cost may exceed that to be used as the upper limit for establishing a replacement housing payment, as determined under § 42.457(a), the State agency shall inform the person of his right to a comparable replacement dwelling and the criteria for a comparable replacement dwelling and shall indicate the estimated purchase price or rental cost to be used as the basis for establishing the upper limit of the replacement housing payment and the basis of that estimate. The housing must be inspected prior to referral to assure that it meets applicable standards (see §§ 42.45 and 42.47). The State agency shall not make referrals on the basis of listings provided by a broker who has not certified his compliance with applicable antidiscrimination laws;

(3) Assure that comparable replacement dwellings are available to all persons to be displaced as described at § 42.209(a);

(4) Assist any person displaced from his business or farm operation to obtain and become established in a suitable replacement location;

(5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal or State programs offering assistance to persons to be displaced;

(6) Insure that the relocation process does not result in different or separate treatment on account of race, color, religion, national origin, sex, or source of income;

(7) Assure that during the period between acquisition and displacement, property occupied by a person to be displaced is maintained in a safe and habitable condition; and

(8) Minimize hardships to persons in adjusting to relocation.

(c) *Coordination of relocation activities.* The State agency shall coordinate its relocation activities with project work and other local governmental actions to the extent necessary to enable it to carry out its relocation assistance advisory program, while giving due regard to the relocation needs of other local programs. The State agency shall cooperate with other local displacing agencies to insure that, to the extent possible, persons displaced receive consistent treatment.

§ 42.213 Affirmative action for low income and minority persons.

(a) *Availability of replacement dwellings in non-impacted areas prior to displacement.* The State agency shall not require a minority or low-income person to move from his dwelling, unless he has been given opportunities to relocate to a comparable replacement dwelling that is not located in an area of low-income and/or minority concentration, if such opportunities are available. This requirement is in addition to that contained in § 42.209(a).

(b) *Advisory Services.* In carrying out its relocation activities, the State agency shall provide additional assistance in order to assure that full choice and real opportunities exist for low-income and minority families and individuals to select replacement dwellings from the total housing market, thereby facilitating desegregation and racially and economically inclusive patterns of occupancy. All low-income and minority persons shall be informed through personal interview (see § 42.211(b)(1)) of housing opportunities outside of low-income and minority neighborhoods, and of the full scope of additional assistance available, and shall be encouraged to take advantage of these opportunities. The State agency shall provide, or secure through contract with fair housing or civil rights groups, additional assistance which shall include, but not to be limited to—

(a) All services necessary to familiarize low-income and minority persons with non-impacted neighborhoods including transportation, escort services to brokers or rental offices, and counseling and help to obtain whatever services and sources of assistance may be available both before and after relocation (e.g., schools, transportation, food stamps, medicare, jobs); and

(2) All services necessary to insure that in securing replacement housing persons are not discriminated against by brokers, rental agents, or mortgagees on the basis of race, color, religion, creed, sex or national origin. Discriminatory acts include, but are not limited to, refusal to rent or sell, offering a unit on different terms, racial steering by directing minorities and whites to different neighborhoods, and requiring different minimum standards of income, payments, deposits, or other financial requirements or standards. Services to be provided by the State agency include but are not limited to: (i) A description in lay language (bilingual if appropriate) of varying types of discrimination and of the displaced person's rights to remedy under Title VII of the Civil Rights Act of

1968, (ii) follow-up testers or auditors if discrimination is suspected, and (iii) assistance in filing for administrative and judicial relief if discrimination is alleged.

§ 42.215 Fair rental charges.

The amount charged a former owner or tenant for the use of the real property between the date of acquisition and the date of displacement for the project shall not exceed the fair rental value for a short-term occupier or the fair market rent, whichever is less. The monthly housing cost (defined at § 42.67) for a dwelling so occupied shall not exceed 25 percent of the person's average monthly gross income.

§ 42.217 Ninety-day notice.

(a) *General.* Unless there is an urgent need for the property (see paragraph (d) of this section), the State agency shall not require any lawful occupant to move from his dwelling or to move his business or farm operation, without at least 90 days' advance written notice of the earliest date by which he may be required to vacate the property. The 90-day notice must include a specific date by which the property must be vacated or include a statement indicating that the occupant will be given a further written notice indicating at least 30 days in advance, the specific date by which be must vacate.

(b) *Timing of notice.* The 90-day notice shall not be given before the notice of displacement is issued. Also, it shall not be given to the lawful occupant of a dwelling, unless he has been given a reasonable choice of opportunities to relocate to a comparable replacement dwelling as prescribed by § 42.209(a). Finally, the 90-day notice shall be timed so that no lawful occupant shall be required to vacate the property before 30 days after the date on which the State agency obtains title to the property or the legal right of possession of the property, whichever is earlier.

(c) *Rehabilitation.* Whenever the displacement results from the rehabilitation of tenant-occupied property owned by a private party as described at § 42.49(b), the State agency shall require the private owner of the real property to give notice to each tenant in accordance with this section.

(d) *Urgent need.* An occupant may be required to vacate the property on less than 90 days' advance notice if the State agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to his health or safety. A copy of the State agency's determination shall be sent to HUD within three days after its issuance.

(e) *Agreement in negotiated purchase contract.* An agreement as to the time for delivering possession of the real property specified in a negotiated purchase contract fulfills the requirement for a 90-day notice to the owner. However, such agreement does not fulfill the requirement for a 90-day notice to a tenant who is not a party to the purchase contract.

(f) *Notice not required.* The provisions of this section do not apply in any case where—

(1) The real property is vacant land; or

(2) The occupant initially occupies the property after acquisition by the State agency and is notified prior to occupancy that he will not be eligible for relocation assistance under the Uniform Act or HUD regulations, or

(3) The occupant voluntarily moves prior to receiving a notice to vacate; or

(4) The required move is for a temporary period in accordance with § 42.49(d)(7) or § 42.207.

§ 42.219 Eviction for cause.

Eviction for cause is permissible only as a last resort and must conform to applicable State and local law. If a person is evicted for cause on or after the effective date of a notice of displacement issued to him as described at § 42.205(a) or (b), he retains his right to the relocation payments and other assistance for which he may be eligible under these regulations. However, the date of the eviction establishes the date of his displacement. A person who has received a notice of right to continue in occupancy (described at § 42.207) and is subsequently required to move for cause is not eligible for relocation payments or other assistance under these regulations.

§ 42.221 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment under Subparts D, E, F, G, or H shall be submitted to the State agency on the appropriate HUD form and supported by such documentation as may reasonably be required by the State agency or HUD to demonstrate expenses incurred, such as bills, certified prices, appraisals or other evidence of such expenses. However, the State agency must assure that the required HUD form is available to the displaced person and must provide whatever assistance is necessary to enable the person to complete the form and file his claim for payment.

(b) *Time for filing.* All claims for a relocation payment shall be filed with the State agency within 18 months after the move is completed, unless this time period is waived by the State agency. However, a person may appeal under Subpart J (Appeals) the refusal of the State agency to waive the 18-month time limit.

(c) *Multiple occupants of one acquired dwelling.* If two or more occupants, whether or not they are members of the same family, lived together in the acquired dwelling but moved to separate replacement dwellings, each such occupant is entitled to his reasonable prorated share, as determined by the State agency, of any payment(s) under Subparts E, F, G, and H, that would apply if such occupants together acquired, or rented, as the case may be, and moved to a comparable replacement dwelling. However, if the State agency determines that two or more separate tenancies exist, the tenants have separate entitlements to payments under these regulations.

(d) *Direct payment of claim.* The State agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to the State agency or any other creditor. The full amount of a relocation payment shall be made payable to the eligible claimant, unless the claimant designates in writing that a specific amount shall be paid to another party.

§ 42.223 Relocation payments not considered as income.

No relocation payment received by a displaced person under the regulations in this part shall be considered as income for the purposes of the Internal Revenue Code of 1954, or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

§ 42.225 Relocation recordkeeping.

The State agency shall maintain a separate relocation case file for each displaced person for at least three years after the project has been completed or the person has received his final relocation payment, whichever is later. All data shall be readily available to HUD on request. The State agency shall also maintain a management control system that includes regular reports to State agency officials as to the size and composition of the estimated, active, and completed relocation workloads. Each separate relocation case file shall include—

(a) A record form indicating—

(1) Name of person;

(2) Minority group classification;

(3) Address and census tract of dwelling or location from which displacement has or will take place.

(4) In the case of a dwelling, the date of initial occupancy, the age and sex of all members of the household, the monthly gross income of all adult members of the household, and the monthly housing cost at both the acquired and replacement dwellings. In the case of a nonresidential unit, the type of enterprise shall be specified.

(5) Relocation needs of person to be displaced;

(6) Services and assistance provided including nature and dates, beginning with the initial contact and/or referral.

(7) Referrals made to replacement dwelling or location, including date of referral, address, sale or rental price, and date of availability of property. If referral is rejected, the reason(s) for rejection shall be indicated;

(8) Type and amount of each relocation payment;

(9) Address and census tract of the replacement dwelling or location, and the date of the relocation; and

(10) In the case of a low-income or minority person who was displaced from a dwelling, an indication as to whether or not the replacement and referral dwellings are located in an area of low-income and/or minority concentration;

(b) A copy of any preliminary relocation notice (described at § 42.203), and evidence, including date, of receipt by person to be displaced;

(c) A copy of the notice of displacement (described at § 42.205) and evidence, including date, of receipt by person to be displaced.

(d) A copy of any lease or other occupancy agreement between the State agency and the occupant and a statement identifying the basis for the State agency's determination of the rental;

(e) If relocation has not been completed within 6 months following the acquisition of the property, an explanation of the reasons for the delay and a plan for timely relocation;

(f) A copy of the 90-day notice required under § 42.217 or a statement as to why no such notice was required

(g) In the case of a dwelling, a record of the inspection, date of inspection, and description of the replacement dwelling

(h) A copy of each relocation payment claim form and supporting documentation submitted by the displaced person, a copy of each worksheet or other document used to determine eligibility for or the amount of the payment made, a copy of the cancelled check or other evidence of receipt of payment, and a copy of all correspondence relating to the claim;

(i) A copy of any appeal filed by the displaced person under Subpart I (Appeals), a description of the action taken to resolve it, and a copy of all pertinent determinations; and

(j) Any other pertintent information, such as the referral of a discrimination complaint or information detailing the circumstances and resolution of any required temporary relocation.

Subpart D—Moving and Related Expenses—Actual Costs

§ 42.301 Eligibility.

(a) *General.* All displaced persons (defined at § 42.49) are eligible for moving and related expenses as prescribed in this subpart. A displaced person who lives on his business or farm property may be eligible for both a payment as a dwelling occupant and a payment with respect to the business or farm operation.

(b) *Least costly approach.* The amount of payment for an eligible expense under this subpart shall not exceed the least costly method, as determined by the State agency, of accomplishing the objective of the payment without causing undue hardship to the displaced person.

§ 42.303 Actual reasonable moving and related expenses—residential moves.

Subject to the limitations contained in this subpart, a displaced owner-occupant or tenant of a dwelling is entitled to actual reasonable expenses for—

(a) Transportation of the displaced person and personal property from the acquired site to the replacement site Transportation costs for a distance beyond 50 miles are not eligible, unless the State agency determines that relocation beyond 50 miles is justified

(b) Packing, crating, unpacking and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property;

(d) Storage of the personal property as the State agency determines to be necessary;

(e) Insurance of the personal property in connection with the move and necessary storage; and

(f) Other moving-related expenses that are not listed as ineligible under § 42.313, as the State agency determines to be reasonable and necessary

§ 42.305 Actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Subject to the limitations of this subpart, a displaced business, farm operation or nonprofit organization is entitled to payment for actual reasonable expenses for—

(1) Transportation of personal property from the acquired site to the replacement site. Transportation costs for a distance beyond 50 miles are not eligible, unless the State agency determines that relocation beyond 50 miles is justified;

(2) Packing, crating, unpacking, and uncrating the personal property;

(3) Disconnecting, dismantling, removing, reassembling and installing relocated and substitute machinery, equipment, and other personal property. This includes connection to utilities available nearby and modifications necessary to adapt such property to the replacement structure or to the utilities or to adapt the utilities to the personal property;

(4) Storage of the personal property, as the State agency determines to be necessary;

(5) Insurance of personal property in connection with the move and necessary storage;

(6) Any license, permit or certification required by the displaced person, to the extent such cost is (i) necessary to its reestablishment at the replacement location and (ii) does not exceed either the cost for one year or for the remaining useful life of the existing license, permit, or certification, whichever is less;

(7) Professional services, including architect's attorney's and engineer's fees, and consultant's charges, necessary for (i) planning the move of the personal property, (ii) moving the personal property, or (iii) installing the relocated personal property at the replacement location;

(8) Relettering signs and printing replacement stationery made obsolete as a result of the move;

(9) Actual direct loss of tangible personal property as described at § 42.307;

(10) Purchase of substitute personal property as described at § 42.309.

(11) Searching for a replacement location as described at § 42.311; and

(12) Other moving-related expenses that are not listed as ineligible under § 42.313, as the State agency determines to be reasonable and necessary.

(b) *Self-move.* If the displaced person self-moves his business, farm operation or nonprofit organization, the State agency may approve a payment for his moving expenses in an amount not to

the physical completion of the project, including the certificate of occupancy and/or other official approvals required for occupancy, but the evidence of completion in other respects is not acceptable, it will, upon request by the HFA, approve execution of the Contract In such cases, however, until the remaining evidence of completion is submitted and found acceptable by HUD:

(a) The contract rent for the purpose of computing housing assistance payments with respect to any unit will be the monthly amount of the debt service on the permanent obligations attributable to the unit, or, if the project is not yet permanently financed, the amount of debt service on the interim obligations; and

(b) Rent-up and occupancy will be subject to such conditions as HUD may require.

The contract will be executed first by the owner and the HFA and then approved by HUD.

* **§ 883.411 Cost certification.**

(a) As soon as possible after execution of the Contract, the HFA must certify to HUD that it has reviewed and approved the certified costs submitted by the owner. The HFA must submit to HUD with its certification a summary of the owner's cost certifications. The certifiable cost may include relocation costs incurred by the owner under § 883.311, except for payments to tenants permanently relocated under § 883.311(b)(8)(ii). The owner's cost certifications must be consistent with any HUD requirements and be supported by the unqualified opinion of an Independent Public Accountant. A cost certification submission is not required by HUD for projects with rents that are equal to or less than comparable rents, or except as required by § 883.305(b)(1)(ii), for partially assisted projects or small projects. HFAs may impose their own cost certification requirements in addition to any required by HUD. *

(b) If the certified costs provided in accordance with paragraph (a) of this section are less than the projected replacement costs provided under § 883.403(c), the contract rents will be reduced accordingly.

(c) If the contract rents are reduced pursuant to paragraph (b) of this section the maximum ACC commitment will be reduced. If contract rents are reduced based on certification after Contract execution, any overpayments since the effective date of the Contract will be recovered from the owner by the HFA and returned to HUD.

Subpart E—Existing Housing and Moderate Rehabilitation Projects

§ 883.501 Modification of existing housing/moderate rehabilitation regulations.

If an Agency wishes to use all or part of its set-aside as agreed under § 883.204(b) for an existing housing or moderate rehabilitation program, it must follow the provisions set forth in the regulations for the Section 8 Housing Assistance Payments Program—Existing Housing, 24 CFR Part 882 except as follows:

(a) The Agency may submit to HUD at any time, without reference to any HUD Invitation, an application pursuant to 24 CFR Part 882 which must be in accordance with the provisions of that part.

(b) The Agency must at the same time submit to HUD, on the prescribed HUD form, an Application accompanied by:

(1) A Certification that it has made a public announcement that it has been allocated a set-aside, in accordance with § 883.204(d); and

(2) A demonstration that the proposed project complements the allocation program of the HUD field office.

(c) In implementing the provisions of 24 CFR Part 882, with respect to review and comment by local governments, the provisions of § 883.206(b) must be satisfied.

Subpart F—Housing Assistance Payments Contract

§ 883.601 Applicability.

The provisions of this Subpart apply to new construction and substantial rehabilitation projects using contract authority allocated under Subpart B, Allocation and Assignment of Contract Authority, or processed and constructed under Subpart D, Fast Track Procedures

§ 883.602 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and State Agency with respect to the project and the Housing Assistance payments.

(b) *Effective Date of Contract.* The effective date of the Contract may be earlier than the date of execution, but no earlier than the date the Agency inspects and accepts the project except as provided in § 883.410.

(c) *Housing Assistance Payments to Owners under the Contract.* The Housing Assistance Payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units ("vacancy payments") if the conditions specified in § 883.712 are satisfied.

The housing assistance payments are made monthly by the State Agency upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the Agency upon proper requisition by the owner.

(d) *Amount of Housing Assistance Payments to the Owner.* (1) The amount of the housing assistance payments made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in § 883.712. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as the Agency directs in accordance with HUD guidelines.

(3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in § 883.712, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(e) *Additional Housing Assistance Payments to Families.* In those cases where the total family contribution of a family leasing an assisted unit is less than the utility allowance for the unit, the difference will be paid to the family as an additional housing assistance payment. The Contract will provide that the owner will make this payment on behalf of the Agency. Funds for this purpose will be paid to the owner in trust solely for the purpose of making the additional payment.

* **§ 883.603 Term of contract.**

(a) *New Construction.* The term of the Contract will be governed by the following provisions:

(1) For assisted units in a project financed with the aid of a loan insured by the Federal government (including coinsurance under Section 244 of the National Housing Act) or a loan made, guaranteed or intended for purchase by the Federal government and for assisted units in newly constructed manufactured home parks, the term of the Contract will be 20 years

(2) For assisted units in a project owned by or financed by a loan or loan

§ 42.355 Fixed payment for moving expenses—nonresidential moves.

(a) *General.* The fixed payment for moving and related expenses of a displaced business or farm operation that meets the applicable requirements under this section is an amount equal to its average annual net earnings as computed in accordance with § 42.357, but not less than $2,500 nor more than $10,000. A nonprofit organization which meets the applicable requirements under this section is entitled to a payment of $2,500.

(b) *Business.* A business qualifies for payment under this Section if the State agency determines that—

(1) The business cannot be relocated without a substantial loss of its existing patronage. A business is assumed to meet this test, unless the State agency demonstrates that it will not suffer a substantial loss of its existing patronage;

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the State agency, and which is under the same ownership and engaged in the same or similar business activities. For purposes of this rule, no remaining business facility which had average annual gross receipts of less than $2,000 and average annual net earnings of less than $1,000, during the two taxable years prior to displacement, shall be considered "another establishment"; and

(3) The business had (i) average annual gross receipts of at least $2,000 during the two taxable years prior to displacement, or (ii) average annual net earnings of at least $1,000 as determined in accordance with § 42.357. However, the State agency may waive this test in any case in which it determines that its use would cause a substantial hardship.

(c) *Determining number of businesses acquired.* In determining whether two or more legal entities, all of which have been acquired, constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which—

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business, and

(4) The same person or closely related persons own, control or manage the affairs of the entities

(d) *Farm operation.* A farm operation qualifies for a payment under this section if the State agency determines that it meets the criteria set forth in paragraph (b)(3) of this section. In the case of a partial acquisition, the fixed payment shall be made only the State agency determines that—

(1) The part acquired was a farm operation before the acquisition; or

(2) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(3) The partial acquisition caused a substantial change in the nature of the farm operation.

(e) *Nonprofit organization.* A nonprofit organization qualifies for a $2,500 payment under this Section, if the State agency determines that it—

(1) Cannot be relocated without a substantial loss of existing patronage (membership and clientele). A non-profit organization is assumed to meet this test, unless the State agency demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the State agency.

(f) *Loss of good will.* A fixed payment under this section does not cover "loss of good will." Therefore, compensation to a person for "loss of good will" under State or local law or policy shall not be used as a basis for denying payment under this section.

§ 42.357 Average net earnings of business or farm.

(a) *Computing net earnings.* For purposes of this subpart, the average annual net earnings of a business or farm operation is one-half of its net earnings before Federal, State and local income taxes, during the two taxable years immediately prior to the taxable year in which it was displaced. However, if the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be computed on the basis of the actual period of operation on the acquired site, projected to an annual rate. Also, average annual net earnings may be based upon a different period of time when the State agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, his spouse, or dependents.

(b) *Documentation.* A displaced person who elects to receive a fixed payment in lieu of actual expenses incurred in moving his business or farm shall furnish the State agency proof of his net earnings through income tax returns, certified financial statements or other reasonable evidence.

Subpart F—Replacement Housing Payments for 180-Day Homeowner-Occupants

§ 42.401 Eligibility.

(a) *Basic eligibility requirements.* A displaced person is eligible for the replacement housing payment specified at § 42.403 if he—

(1) Has actually owned and occupied an acquired dwelling for not less than 180 days prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date he receives final payment for the acquired dwelling or the date he moves from the acquired dwelling, whichever is later.

(b) *Other rules and requirements.* A payment under this Subpart F is subject to the other applicable rules and requirements of these regulations. See in particular, § 42.221(c) (Multiple occupants of one acquired dwelling) and § 42.457 (Additional rules governing replacement housing payments under Subparts F and G).

§ 42.403 Determination of replacement housing payment.

(a) *Amount of payment.* The replacement housing payment for a 180-day homeowner-occupant who meets the eligibility requirements of § 42.401 is an amount, not to exceed $15,000, which represents the combined cost of—

(1) The amount, if any, by which the cost of a replacement dwelling exceeds the State agency's "acquisition cost" for the acquired dwelling, as determined in accordance with § 42.405 (Differential amount);

(2) The amount, if any, necessary to compensate the displaced person for any increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined under § 42.407 (Increased interest costs); and

(3) The amount of the reasonable expenses, as determined in accordance with § 42.409 (Incidental expenses), that are incidental to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) *Conversion of payment.* A 180-day owner-occupant, who initially rents a replacement dwelling and receives a rental assistance payment under § 42.453, is eligible to receive a payment under this section if he meets the eligibility criteria described at § 42.401, including purchase and occupancy within the prescribed one-year period The amount of the rental assistance

payment shall be deducted from the amount computed under this section.

(c) *Determination pending condemnation award.* If the exact amount of a replacement housing payment cannot be determined because of a pending condemnation suit, an advance payment may be made to the claimant, if the State agency and claimant agree in writing to recomputate the payment on the basis of the acquisition price determined by the court and to make any necessary adjustment. For purposes of the advance payment, the fair market value of the property, as determined by the State agency, shall be considered its "acquisition cost."

§ 42.405 Differential amount.

(a) *General.* The differential amount to be paid under § 42.403(a)(1) is the amount, if any, which must be added to the acquisition cost of the acquired dwelling to provide a total amount equal to the lesser of—

(1) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 42.457(a), or

(2) The purchase price of the decent, safe, and sanitary replacement dwelling actually acquired and occupied by the displaced person.

(b) *Mixed-use and multifamily properties acquired.* If the acquired dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, only that portion of the acquisition payment which is actually attributable to the acquired dwelling shall be considered its "acquisition cost" when computing the differential amount.

(c) *Certain dwellings not acquired.* If an owner-occupant is displaced by rehabilitation, code enforcement or demolition as described at § 42.403, the fair market value of the dwelling, including site, shall be considered its "acquisition cost" when computing the differential amount.

(d) *Disaster-related insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a disaster related loss to the acquired dwelling shall be included in the "acquisition cost" of the acquired dwelling when computing the differential amount.

(e) *Owner retention of acquired dwelling.* If the owner retains ownership of his dwelling, moves it from the acquired site, and reoccupies it on a replacement site (see also § 42.111(d) Owner retention of improvements), the purchase price of the replacement dwelling shall be considered to be the sum of—

(1) The moving and restoration expenses,

(2) The costs, if any, incurred to make the unit a comparable replacement dwelling (defined at § 42.45); and

(3) If the claimant owned the acquired site, the cost of the replacement site, not to exceed the cost of an available replacement site comparable to the acquired site.

§ 42.407 Increased interest costs.

The amount to be paid for increased mortgage interest costs under § 42.403(a)(2) is the sum of the present value of any increase in interest costs resulting because the interest rate on the mortgage financing on the replacement dwelling exceeds that on the acquired dwelling, and other debt service costs, all computed on the basis of the following rules—

(a) The payment shall only be based on bona fide mortgages that were a valid lien on the acquired dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the acquired dwelling shall be used to compute the payment;

(b) The payment shall be based on the unpaid mortgage balance on the acquired dwelling or the new mortgage amount, whichever is less;

(c) The payment shall be based on the remaining term of the mortgage on the acquired dwelling or the actual term of the new mortgage, whichever is shorter.

(d) The interest charge on the new mortgage shall not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located;

(e) The present value of the increased cost shall be computed at the prevailing interest rate paid on savings deposits by commercial banks in the area in which the replacement dwelling is located; and

(f) Purchaser's points and origination fees, but not seller's points, shall be paid to the extent (1) they are not paid as incidental expenses, (2) they do not exceed rates normal to similar real estate transactions in the area, and (3) the State agency determines them to be necessary. The computation of such points and fees shall be based on the unpaid mortgage balance on the acquired dwelling or the new mortgage amount, whichever is less.

§ 42.409 Incidental expenses.

(a) *Eligible costs.* Subject to the limitations in paragraphs (b) and (c) of this section, the incidental expenses to be paid under § 42.403(a)(3) or § 42.455 are those actually incurred by the displaced person incident to the purchase of the replacement dwelling, including—

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing plats, and recording fees;

(2) Lender, FHA or VA appraisal fees,

(3) FHA or VA application fee;

(4) Certification of structural soundness when required by the lender;

(5) Credit report;

(6) Owner's and mortgagee's evidence or assurance of title;

(7) Escrow agent's fee;

(8) State revenue or documentary stamps, sales or transfer taxes; and

(9) Such other costs as the State agency determines to be incidental to the purchase.

(b) *Limitation.* If the purchase price of the replacement dwelling exceeds the price of a comparable replacement dwelling, the amount payable for an expense under paragraph (a) of this section shall not exceed the cost that would have been incurred if the displaced person purchased a comparable replacement dwelling.

(c) *Truth in lending charge.* Any expense, which is determined to be part of the debt service or finance charge under 15 U.S.C. 1631–1641 and Regulation Z (12 CFR Part 226) issued thereunder by the Board of Governors of the Federal Reserve System, is not eligible for reimbursement as an incidental expense.

Subpart G—Replacement Housing Payments for Tenants and Certain Others

§ 42.451 Basic eligibility requirements.

A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $4,000 for rental assistance, as computed in accordance with § 42.453, or downpayment assistance, as computed in accordance with § 42.455, if such displaced person—

(a) Has actually and lawfully occupied the acquired dwelling for at least 90 days prior to the initiation of negotiations; and

(b) Is not eligible to receive a replacement housing payment for 180-day homeowner-occupants under Subpart F; and

(c) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year after—

(1) In the case of a tenant, the date he moves from the acquired dwelling; or

(2) In the case of an owner-occupant, the date he receives final payment for the acquired dwelling or the date he moves from the acquired dwelling, whichever is later.

§ 42.453 Replacement housing payment for rental assistance.

(a) *Amount of payment.* A displaced person who rents the replacement dwelling and qualifies for a payment under § 42.451 is entitled to a payment up to but not to exceed, $4,000 for rental assistance. Such payment shall be 48 times the amount, if any, obtained by subtracting the base monthly housing cost for the acquired dwelling, as determined under paragraph (b) or (c) of this section from the lesser of—

(1) The monthly housing cost (defined at § 42.67) for a comparable replacement dwelling; or

(2) The monthly housing cost for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(b) *Base monthly housing cost.* Except as provided in paragraph (c) of this section, the base monthly housing cost for the acquired dwelling is the lesser of—

(1) The average monthly housing cost (defined at § 42.67) for the 12-month period immediately prior to displacement or such other period (not to exceed 12 months) that the State agency determines will more accurately reflect average costs. However, in the case of an owner-occupant or other person who does not pay rent, the monthly housing cost shall be the fair market rent for the acquired dwelling, including reasonable charges for utilities; or

(2) Twenty-five (25) percent of the displaced person's gross monthly income as described at § 42.45(f)(1).

(c) *Students and other dependents.* The base monthly housing cost for a person who derives 51 percent or more of his income in the form of private gifts or academic scholarship or stipend is the average monthly housing cost for the acquired dwelling computed as described at paragraph (b)(1) of this section. A full-time student or an individual residing in a hospital, sanitarium, or similar institution is assumed to be such a dependent person, unless he provides evidence to the State agency which demonstrates that 50 percent or more of his income is derived from sources other than gifts, scholarships, or stipends.

(d) *Manner of disbursement.* The payment under this section shall be disbursed in a lump sum amount, unless the displaced person requests the payment to be made in installments.

§ 42.455 Replacement housing payment for downpayment assistance.

(a) *Amount of payment.* A displaced person who purchases the replacement dwelling and qualifies for a payment under § 42.451 is entitled to a payment for downpayment assistance up to, but not to exceed, $4,000. Such payment shall be the full amount of the first $2,000 of the required downpayment and incidental expenses computed under § 42.409 plus one-half of any amount required over $2,000. The displaced person must provide the other half of the amount over $2,000. However, the total payment by the State agency shall not exceed $4,000.

(b) *Required downpayment.* For purposes of this section, the term "required downpayment" means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the "required downpayment" shall be the amount which the State agency determines is necessary for the downpayment.

(c) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 42.457 Additional rules governing replacement housing payments under Subparts F and G.

The rules in this section apply to replacement housing payments under Subparts F and G of the regulations in this part.

(a) *Determining reasonable cost of comparable replacement dwelling.* The reasonable purchase or rental cost of a comparable replacement dwelling, which is used as the basis for establishing the upper limit of a replacement housing payment, shall be determined by an examination of the proposed selling price or rental cost of one or more dwellings which meet the definition of a comparable replacement dwelling as set forth at § 42.45 and which are most representative of the acquired dwelling. Such dwelling(s) shall be selected from the neighborhood in which the acquired dwelling was located. However, to the extent that representative comparable replacement dwellings are not available in such neighborhood, dwelling(s) shall be selected from adjacent or nearby neighborhoods in ascending order of housing costs. Neighborhoods in which housing costs are generally lower than those of the neighborhood of the acquired dwelling shall not be used for the selection. The determination of the upper limit of the payment shall be made on a case-by-case basis in accordance with the findings of a qualified individual who is familiar with real property values in the area. However, such case-by-case comparison is not necessary if the State agency makes the replacement housing payment on the basis of the cost of the decent, safe and sanitary replacement dwelling actually purchased or rented by the displaced person.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, as the case may be, the State agency or its designated representative shall inspect the replacement dwelling and determine whether or not it meets the definition of a decent, safe, and sanitary dwelling as set forth at § 42.47.

(c) *Purchase requirement.* A displaced person is considered to have met the requirement to purchase a dwelling, if he—

(1) Acquires a dwelling; or

(2) Acquires and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he owns or acquires; or

(4) Constructs a dwelling on a site he owns or acquires; or

(5) Contracts for the purchase or constuction of a dwelling on a site provided by a builder or on a site he owns or acquires.

(d) *Delay in occupancy after purchase of replacement dwelling.* If the displaced person initially occupies the replacement dwelling after the date by which occupancy is required, but the delay beyond such date is caused by reasons beyond his control, the date of occupancy shall be established as follows—

(1) If construction, rehabilitation or relocation of a replacement dwelling is the cause of the delay, the date the displaced person enters into the contract for such construction, rehabilitation or relocation, or for the purchase of the replacement dwelling upon completion of the construction or rehabilitation, shall be considered to be the date of occupancy; or

(2) If the delay is caused by hardship the date the displaced person became entitled to possession of the dwelling

shall be considered to be the date of occupancy.

(e) *Presidentially declared disaster.* No person shall be denied eligibilty for a replacement housing payment solely because he is unable, because of a major disaster as determined by the President, to meet the occupancy requirements set forth in the regulations in this part.

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his death the undisbursed portion of any such payment shall not be paid to his heirs or assigns, except that—

(1) The amount attributable to the displaced person's actual occupancy of the replacement housing shall be paid;

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy the replacement dwelling selected in accordance with the regulations in this part; and

(3) That portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

Subpart H—Mobile Homes

§ 42.501 Purpose.

This subpart sets forth basic policies governing the application of Subparts D, E, F and G to displaced persons who own and/or occupy mobile homes.

§ 42.503 Moving and related expenses.

(a) *General.* A displaced person is entitled to payment for the cost of moving his personal property, including his mobile home if it is personal property, on an actual cost basis in accordance with Subpart D or, as an alternative, on the basis of a fixed payment under Subpart E as described in the applicable Federal Highway Administration schedule (49 CFR 25.153, Appendix A). However, if the mobile home is personal property and the owner obtains a replacement housing payment because the mobile home is not decent, safe and sanitary or cannot be moved without substantial damage or unreasonable cost, the owner is not eligible for payment of moving expenses under Subpart D or E for moving the mobile home.

(b) *Mobile home park entrance fee.* A displaced home occupant, who elects to obtain a moving expense payment on an actual cost basis in accordance with Subpart D is entitled to payment for the reasonable entrance fee that he must pay in order to relocate to a mobile home park. However, no part of an entrance fee which is returnable to the person shall be paid.

§ 42.505 Replacement housing payments for 180-day owner-occupants.

(a) *Eligibility.* A displaced owner-occupant of a mobile home is entitled to a replacement housing payment under Subpart F if:

(1) He actually owned the mobile home and occupied it on the site acquired by the State agency for at least 180 days prior to the initiation of negotiations. A person who does not meet this requirement does not qualify for a replacement housing payment under Subpart F, regardless of how long he owned or rented the acquired mobile home site;

(2) He meets the other basic eligibility under Subpart F; and

(3) The mobile home is acquired as real property or is personal property which: (i) Is not decent, safe and sanitary or (ii) cannot be moved without substantial damage or unreasonable cost. In the latter case, when the mobile home is not actually acquired, the "acquisition cost" used for purposes of computing the differential amount (described at § 42.405), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

(b) *Person did not own acquired site and/or did not buy replacement site.* If a displaced person meets the eligibility criteria in paragraph (a) of this section but did not own the acquired mobile home site and/or does not buy the replacement site, the computation of the differential amount (described at § 42.405) shall be based on a comparision of: (1) The "acquisition cost" of the acquired mobile home, exclusive of the cost of the acquired site, and (2) the purchase price of the replacement mobile home, exclusive of the replacement site.

(c) *Basic limitation.* A payment under Subpart F to a displaced mobile home owner-occupant shall not exceed the amount to which he would be entitled if he purchased a comparable replacement mobile home and site.

§ 42.507 Replacement housing payments for tenants and certain others.

(a) *Eligibility.* A displaced occupant of a mobile home is eligible for a replacement housing payment under Subpart G if:

(1) He actually occupied the mobile home on the site acquired by the State agency for at least 90 days prior to the initiation of negotiations. A person who does not meet this requirement does not qualify for a replacement housing payment under Subpart G, regardless of how long he owned or rented or occupied the acquired site;

(2) He meets the other eligibility requirements of § 42.451; and

(3) In the case of an owner-occupant of a mobile home, the mobile home is acquired as real property or is personal property which: (i) Is not decent, safe and sanitary, or (ii) cannot be moved without substantial damage or unreasonable cost.

(b) *Person rents replacement home.* A displaced mobile home occupant, who meets the eligibility criteria described in paragraph (a) of this section and who rents a replacement home, is entitled to a payment determined under § 42.453 (Replacement housing payment for rental assistance) and the following rules:

(1) The payment shall be based on the actual rent for the decent, safe and sanitary replacement dwelling actually rented, or the rent for a comparable replacement mobile home, whichever is less;

(2) If the person purchases the replacement site, the computation of his new monthly housing cost for the replacement dwelling (see § 42.453) shall include the estimated fair market rent for the replacement site or for a comparable replacement site, whichever is less; and

(3) If the person owned the acquired mobile home and/or site, the computation of the monthly housing cost for the acquired dwelling (see § 42.453 (b) or (c)) shall include the estimated fair market rent for the acquired mobile home and/or site, as the case may be.

(c) *Person buys replacement home.* If a displaced mobile home occupant meets the eligibility criteria described in paragraph (a) of this section and buys a replacement dwelling, he is entitled to a payment determined under § 42.455 (Replacement housing payment for downpayment assistance). The payment shall be based on the required downpayment for the decent, safe and sanitary replacement dwelling and/or site actually purchased. However, if the replacement dwelling is a conventional home, the payment shall not exceed the amount payable if the person purchased a comparable replacement mobile home.

Subpart I—Last Resort Replacement Housing

§ 42.601 Applicability.

The provisions of this subpart apply only when the State agency determines that, unless it acts under the provisions of this subpart, there is a reasonable likelihood that the project will not be able to proceed to actual construction because comparable replacement dwelling(s) will not be available on a timely basis to person(s) to be displaced.

§ 42.603 Basic rights and rules.

(a) *General.* The provisions of this subpart do not deprive any displaced person of any rights described elsewhere in this part. The State agency shall not require any displaced person, without his written consent, to accept a dwelling provided by the State agency under the procedures in this subpart in lieu of any acquisition payment or any relocation payment for which he may otherwise be eligible under these regulations. However, the State agency may meet its obligation to provide persons with reasonable opportunities to relocate to a comparable replacement dwelling as described at § 42.209(a) by offering such opportunities developed or to be developed under this subpart.

(b) *Documentation.* The State agency shall include in the applicable relocation case file documentation that demonstrates that, to the maximum extent feasible, it has accommodated the displaced person's preferences.

§ 42.605 Methods of providing replacement housing.

(a) *General.* It is intended that State agencies shall have broad latitude in their methods for implementing this subpart. The methods of providing last resort housing include, but are not limited to—

(1) Rehabilitation of, and/or additions to, an existing replacement dwelling;

(2) A replacement housing payment in excess of the limits set forth in Subparts F and G or the provision of direct State agency mortgage financing;

(3) The construction of a new replacement dwelling;

(4) The relocation and, if necessary, rehabilitation of a replacement dwelling;

(5) The purchase of land and/or a replacement dwelling by the State agency and subsequent sale or lease to, or exchange with, a displaced person; and

(6) The removal of barriers to the handicapped as may be necessary to meet the requirements of § 42.47(a)(5).

(b) *Protections for affected persons.* In acquiring real property for last resort housing or causing the displacement of occupants of a last resort housing site, the State agency shall comply with applicable provisions of the regulations in this part.

If last resort housing is provided by an activity that is not governed by the Uniform Act (e.g., rehabilitation under the community development block grant program), the State agency shall not displace any tenant, unless the tenant is given the relocation payments and other assistance that he would receive if he were a displaced person as defined at § 42.49 of these regulations.

§ 42.607 Construction of housing with project funds.

(a) *Preliminary study.* If it appears necessary to use project funds for the construction of replacement housing in order to satisfy the requirements of this part, the State agency shall—

(1) Prepare an inventory of the characteristics and housing needs and desires of persons to be displaced;

(2) Determine the quantities and types of comparable replacement dwellings that can reasonably be expected to be available to displaced persons; and

(3) Coordinate with other displacing agencies to ensure that their plans for displacement are taken into account.

(b) *Replacement housing plan for new construction.* If the preliminary study indicates the need for the State agency to use project funds to provide last resort replacement housing through new construction, the State agency shall promptly develop and request HUD Area Office approval of a replacement housing plan. The plan shall indicate—

(1) How, when, and where the housing will be provided;

(2) How the housing will be financed, including the amount of project funds to be used;

(3) The prices or rentals at which the housing will be sold or rented to displaced persons, and the arrangements for maintaining rent levels appropriate for the persons to be rehoused;

(4) The arrangements for rental housing management and social services, as appropriate;

(5) The environmental suitability of the housing project and any information that may be required under HUD Handbook 1390.1, Departmental Policies, Responsibilities, and Procedures for Protection and Enhancement of Environmental Quality (38 FR 19182, as amended, 41 FR 23878), or, if the last resort housing is provided under the community development block grant program, the information required by 24 CFR Part 58;

(6) The planned disposition of the proceeds from the rental or sale of the housing and any subsequent resale of the housing by displaced persons;

(7) The State agency's assurances that the housing will be developed in compliance with the requirements of this part and can be legally accomplished in accordance with State law; and

(8) If the last resort housing project includes more than 25 dwelling units, the comments, if any, of the State and Areawide Clearinghouses designated under OMB Circular No. A–95 and the advisory committee established in accordance with paragraph (c) of this section. However, if any of these organizations fails to comment within the specified reasonable time period provided, it shall be considered as having no comments. At least 30 days shall be provided for comment, unless the State agency determines that a shorter but reasonable period is necessary to permit timely implementation of the plan.

(c) *Advisory committee—26 units or more.* If a last resort housing project involves the construction of 26 or more new units, the State agency shall appoint an advisory committee to provide advice and assistance on the development of the replacement housing plan. The advisory committee shall include representatives of the State agency, the chief executive officer of the locality, the local housing authority, central relocation agency, the persons to be displaced, and other appropriate groups knowledgeable about housing and the problems of housing discrimination. The failure of any person to participate on the committee shall not preclude the committee from satisfying the requirements of this section. Having afforded the committee the opportunity to provide advice and assistance in the development of the plan, the State agency shall have full authority for the recommendation of a plan to HUD and for carrying out the approved last resort housing project.

§ 42.609 Compliance with other laws and regulations.

The implementation of this subpart shall be in compliance with the following, including HUD implementing regulations—

(a) Section 1 of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.);

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.);

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347);

(e) Executive Order 11063 (Equal Opportunity in Housing) 3 CFR Comp. 1959–1963, page 652;

(f) Executive Order 11246 (Equal Employment Opportunity) 3 CFR Comp. 1964–1965, page 339, as amended by Executive Order 11375, 3 CFR Comp. 1966–1970, p. 684; and

(g) Executive Order 11625 (Minority Business Enterprise) 3 CFR Comp. 1971, page 213.

Subpart J—Appeals

§ 42.701 Purpose.

The purpose of this subpart is to prescribe HUD requirements governing appeals of certain State agency actions.

§ 42.703 Basic rights and rules.

(a) *Actions which may be appealed.* A person may file an appeal in any case in which he believes that the State agency has:

(1) Failed to properly determine his eligibility for, or the amount of, a payment required under § 42.119 or § 42.123 or any relocation payment required under the regulations in this part. (A person's acceptance of a payment that is less than the full amount he claimed does not limit his right to appeal the State agency's determination.) A person may also appeal the refusal of the State agency to waive the time limit for filing a claim or the one-year purchase and occupancy requirement described at § 42.451(c); or

(2) Failed to provide appropriate housing referrals or to properly inspect the replacement dwelling as described at § 42.211(b)(2) or failed to comply with a requirement of § 42.209 (Availability of comparable replacement dwellings prior to displacement); or

(3) Failed to comply with a requirement of § 42.207 (Notice of right to continue in occupancy).

(b) *Order of appeal.* An appeal must first be filed with the head of the State agency in accordance with the provisions of this subpart. If a person is not satisfied with the results of the State agency's determination on his appeal, he may seek to have his appeal reviewed by HUD in accordance with § 42.707 (HUD review of appeal).

(c) *Joint appeals.* Two or more persons may join in filing a single appeal if each has grounds for an appeal as specified in paragraph (a) of this section.

(d) *Right to representation.* A person has a right to be represented by legal counsel and to be accompanied by an advisor, attorney or other representative in any personal appearance in connection with his appeal, but solely at his own expense.

(e) *Review of files by person making appeal.* The State agency shall permit a person to inspect and copy all files and records pertinent to his appeal, except materials which are confidential. The State agency may, however, impose reasonable conditions on the person's right of inspection.

(f) *Minimum notice to move.* If a person files a written appeal under paragraph (a)(2) or (a)(3) of this section, he shall not be required to move from the real property until at least 20 days after he receives the State agency's written determination on his appeal, or, if he appeals to HUD, the written HUD determination. The person shall be given at least 20 days advance written notice of the date by which he must move.

(g) *Construction of rules and regulations.* In deciding appeals, it is intended that applicable rules and regulations be applied in a manner that best fulfills the objective of providing "fair and equitable treatment" so that displaced persons do "not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

§ 42.705 Appeal to State agency.

(a) *Timing for initiating appeal to State agency.* Unless waived by the State agency or HUD, an appeal to the State agency (either oral or written appeal) shall be filed as follows—

(1) An appeal concerning eligibility for, or the amount of, a payment shall be filed within 6 months after the State agency's notification to the person of its determination on the claim. An appeal of the State agency's refusal to waive the time limit for filing a claim or its refusal to waive the one-year purchase and occupancy requirement described at § 42.451(c) shall be filed within 30 days after such refusal;

(2) An appeal alleging failure to provide appropriate housing referrals or to properly inspect the replacement dwelling as described at § 42.211(b)(2) or failure to comply with § 42.209 (Availability of comparable replacement dwellings prior to displacement) shall be filed not later than 6 months after the person's displacement; and

(3) An appeal alleging failure of the State agency to comply with § 42.207 (Notice of right to continue in occupancy), shall be filed not later than 6 months after (i) the person's permanent move from the real property, or (ii) the end of the 4-year occupancy period, whichever occurs first.

(b) *Oral appeal to State agency.* If a person, orally or in writing, asks to make an oral appeal to the State agency, the State agency shall give him the opportunity to present his appeal orally to an appropriate State agency official within 15 days. The State agency shall prepare a summary of the matters discussed in the oral presentation and include it as part of its case file. If the State agency does not grant the full relief requested by the person, it shall promptly notify him to that effect, in writing, with a copy to HUD. The notification shall indicate that the person has a right to file a written appeal under this Section. A person's request for an oral presentation shall not entitle him to any postponement of displacement.

(c) *Request for review of written appeal.* A person may file a written appeal to the State agency, whether or not he has made a prior oral presentation. The appeal may include any related statement of fact or other material. If necessary, the applicable time limit for filing an appeal shall be extended to assure that the person has at least 30 days after receiving notification of the decision on his oral appeal in which to file a written appeal.

(d) *Scope of review of written appeal.* The State agency shall consider a person's written appeal, regardless of form. In deciding the appeal, the State agency shall consider—

(1) All applicable rules and regulations;

(2) All pertinent justification and written material submitted by the person making the appeal; and

(3) All material upon which the State agency based the determination(s) being appealed and any other available information that is needed to insure a fair and full review of the appeal.

However, the State agency must ensure that the person making the appeal has had reasonable opportunity to review any such materials and information on which an adverse ruling on the appeal may be based.

(e) *Determination and notification after written appeal.* Within 30 days after receipt of all information submitted by a person in support of his appeal, the State agency shall make its written determination on the appeal and furnish the person with a copy. The written determination shall include, but need not be limited to—

(1) The State agency's decision upon review of the appeal;

(2) The factual and legal basis upon which the decision is based, including any pertinent explanation;

(3) If any payment or other relief to the person is granted, a brief statement on how this will be provided; and

(4) If the full relief requested is not granted, a statement of the person's right to appeal to HUD within 30 days and the address of the applicable HUD office.

(f) *Request for additional time.* If a person makes a reasonable request for additional time to gather and prepare information for a written appeal he must be granted a reasonable amount of additional time.

(g) *Assistance to person making appeal.* If a person is unable to prepare a written appeal, the State agency shall offer him appropriate assistance and notify him of other available sources of assistance.

(h) *Recommendation by third party.* A person making an appeal and the State agency may, by mutual agreement, arrange for a third party to review the appeal and make recommendations to the State agency for its final determination. The agreement may provide for an extension of the 30-day time limit for State agency review. In reviewing the claim and making recommendations, the third party shall be guided by the provisions of paragraph (d) of this section. After receiving the recommendation, the State agency shall comply with the

requirements of paragraph (e) of this section.

(i) *State agency official to hear appeal.* The State agency official hearing an oral appeal or conducting the review of a written appeal shall be either the head of the State agency or his authorized designee other than an official directly involved in the action appealed or a subordinate to such an official.

§ 42.707 HUD review of appeal.

(a) *Request for HUD review.* If a person is not satisfied with the State agency's determination on his appeal, he may request HUD to review that appeal. An appeal to HUD, with a copy to the State agency, shall be submitted to the area manager of the appropriate HUD area office within 30 days after the person receives the State agency's determination on his appeal. A person may support his appeal to HUD with any related facts or other material. However, he need not repeat any arguments nor submit any information previously provided to the State agency for its review.

(b) *Determination and notification by HUD.* HUD may elect to assign staff from its headquarters or any of its field offices to review or participate in the review of an appeal. When reviewing the appeal, HUD shall consider all relevant and available information, rules, and regulations. Within 30 days after receipt of all information supporting the appeal, HUD shall make its written determination on the appeal and shall furnish a copy to the State agency and the person making the appeal. The determination shall include, but need not be limited to—

(1) The HUD decision on review of the appeal;

(2) The factual and legal basis upon which the decision is based, including any pertinent explanation;

(3) If any payment or other relief to the person is ordered, appropriate directions to the State agency on how this shall be provided and a statement of the person's right to seek further HUD assistance in the event such relief is not provided as directed; and

(4) If the full relief requested is not granted, a statement of the person's right to seek judicial review.

(c) *Submission of State agency's file.* Within 5 days after receiving a copy of a person's appeal to HUD, the State agency shall submit to HUD its complete case file on the appeal.

§ 42.709 State agency dismissal of appeal not based on merits.

(a) *General.* If the State agency dismisses an appeal as being too late or premature or because of any other reason not based on the merits of the issues involved, it shall notify the person in writing, with a copy to HUD, of its reasons for the dismissal. The notification shall be sent to the person within 10 days after he files the appeal and shall indicate that he shall have 30 days to seek HUD review of the dismissal.

(b) *HUD review of dismissal.* If a person seeks HUD review of the dismissal of his appeal within the presecribed 30-day period, HUD shall review the dismissal. If HUD finds the State agency's refusal to decide the appeal on its merits was unreasonable, HUD shall require the State agency to review and determine the appeal on its merits within 15 days in accordance with § 42.705 (appeal to State agency) and shall so notify the person making the appeal. If HUD does not find the State agency's dismissal of the appeal to be unreasonable, it shall so notify the person making the appeal. The notification shall inform the person that he may have a right to judicial review. If the dismissal was based on the belief that the appeal was premature, the person shall be advised that he may file an appeal at an appropriate later date.

§ 42.711 Judicial review.

Nothing in this subpart shall in any way preclude or limit a person from seeking judicial review of his appeal on its merits after exhaustion of such administrative remedies as are available to him under this subpart.

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Public Law 91-646
91st Congress, S. 1
January 2, 1971

An Act

To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".

TITLE I—GENERAL PROVISIONS

SEC. 101. As used in this Act—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6) The term "displaced person" means any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 202(a) and (b) and 205 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 202(a) of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

EFFECT UPON PROPERTY ACQUISITION

SEC. 102. (a) The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act.

TITLE II—UNIFORM RELOCATION ASSISTANCE

DECLARATION OF POLICY

SEC. 201. The purpose of this title is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

MOVING AND RELATED EXPENSES

SEC. 202. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this Act, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

REPLACEMENT HOUSING FOR HOMEOWNER

SEC. 203. (a)(1) In addition to payments otherwise authorized by this title, the head of the Federal agency shall make an additional payment not in excess of $15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person,

reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

SEC. 204. In addition to amounts otherwise authorized by this title, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 203(a)(1)(C)) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

RELOCATION ASSISTANCE ADVISORY SERVICES

SEC. 205. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this section, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this Act shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(4) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

SEC. 206. (a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(b) No person shall be required to move from his dwelling on or after the effective date of this title, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 205(c)(3), is available to such person.

STATE REQUIRED TO FURNISH REAL PROPERTY INCIDENT TO FEDERAL ASSISTANCE (LOCAL COOPERATION)

SEC. 207. Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance.

STATE ACTING AS AGENT FOR FEDERAL PROGRAM

SEC. 208. Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this Act, be deemed an acquisition by the Federal agency having authority over such program or project.

PUBLIC WORKS PROGRAMS AND PROJECTS OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA AND OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SEC. 209. Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Tran-

sit Authority for a program or project which is not subject to sections 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after the effective date of this Act, the Commissioner of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this Act. Whenever real property is acquired for such a program or project on or after such effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by title III of this Act.

REQUIREMENTS FOR RELOCATION PAYMENTS AND ASSISTANCE OF FEDERALLY ASSISTED PROGRAM; ASSURANCES OF AVAILABILITY OF HOUSING

SEC. 210. Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

(2) relocation assistance programs offering the services described in section 205 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with section 205(c)(3).

FEDERAL SHARE OF COSTS

SEC. 211. (a) The cost to a State agency of providing payments and assistance pursuant to sections 206, 210, 215, and 305, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 206, 210, 215, and 305, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first $25,000 of such cost.

(b) No payment or assistance under section 210 or 305 shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available.

(c) Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 206, 210, 215, and 305.

ADMINISTRATION—RELOCATION ASSISTANCE IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

SEC. 212. In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 206, 210, and 215 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this title through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 206, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

REGULATIONS AND PROCEDURES

SEC. 213. (a) In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs.

(b) The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this Act, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

(c) The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this Act, as he deems necessary or appropriate to carry out this Act.

ANNUAL REPORT

SEC. 214. The head of each Federal agency shall prepare and submit an annual report to the President on the activities of such agency with respect to the programs and policies established or authorized by this Act, and the President shall submit such reports to the Congress not later than January 15 of each year, beginning January 15, 1972, and ending January 15, 1975, together with his comments or recommendations. Such reports shall give special attention to: (1) the effectiveness of the provisions of this Act assuring the availability of comparable replacement housing, which is decent, safe, and sanitary, for displaced homeowners and tenants; (2) actions taken by the agency to achieve the objectives of the policies of Congress, declared in this Act, to provide uniform and equal treatment, to the greatest extent practicable, for all persons displaced by, or having real property taken for, Federal or federally assisted programs; (3) the views of the Federal agency head on the progress made to achieve such objectives in the various programs conducted or administered by such agency, and among the Federal agencies; (4) any indicated effects of such programs and policies on the public; and (5) any recommendations he may have for further improvements in relocation assistance and land acquisition programs, policies, and implementing laws and regulations.

PLANNING AND OTHER PRELIMINARY EXPENSES FOR ADDITIONAL HOUSING

SEC. 215. In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such

Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts.

PAYMENTS NOT TO BE CONSIDERED AS INCOME

SEC. 216. No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

DISPLACEMENT BY CODE ENFORCEMENT, REHABILITATION, AND DEMOLITION PROGRAMS RECEIVING FEDERAL ASSISTANCE

SEC. 217. A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after the effective date of this Act, as a direct result of any project or program which receives Federal financial assistance under title I of the Housing Act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall, for the purposes of this title, be deemed to have been displaced as the result of the acquisition of real property.

TRANSFERS OF SURPLUS PROPERTY

SEC. 218. The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

DISPLACEMENT BY A SPECIFIC PROGRAM

SEC. 219. Notwithstanding any other provision of this title, a person—

(1) who moves or discontinues his business, moves other personal property, or moves from his dwelling on or after January 1, 1969, and before the 90th day after the date of enactment of this Act as the result of the contemplated demolition of structures or the construction of improvements on real property acquired, in whole or in part, by a Federal agency within the area in New York, New York, bounded by Lexington and Third Avenues and 31st and 32d Streets, and

(2) who has lived on, or conducted a business on, such real property for at least one year prior to the date of enactment of this Act;

may be considered a displaced person for purposes of sections 202 (a) and (b), 204, and 205 of this title, by the head of the agency acquiring the real property if—

(A) the head of the agency determines that such person has suffered undue hardship as the result of displacement from the real property; and

(B) the Federal Government acquired and held such property for at least five years prior to the date of enactment of this Act.

REPEALS

SEC. 220. (a) The following laws and parts of laws are hereby repealed:

(1) The Act entitled "An Act to authorize the Secretary of the Interior to reimburse owners of lands required for development under his jurisdiction for their moving expenses, and for other purposes", approved May 29, 1958 (43 U.S.C. 1231, 1232);

(2) Paragraph 14 of section 203(c) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473).

(3) Section 2680 of title 10, United States Code.

(4) Section 7(b) of the Urban Mass Transportation Act of 1965 (49 U.S.C. 1606(b)).

(5) Section 114 of the Housing Act of 1949 (42 U.S.C. 1465).

(6) Paragraphs (7)(b)(iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415, 1415(8)), except the first sentence of paragraph (8).

(7) Section 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to pay relocation costs made necessary by actions of the District of Columbia government, and for other purposes", approved October 6, 1964 (78 Stat. 1004; Public Law 88–629; D.C. Code 5–729).

(8) Section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074).

(9) Sections 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307).

(10) Chapter 5 of title 23, United States Code.

(11) Sections 32 and 33 of the Federal-Aid Highway Act of 1968 (Public Law 90–495).

(b) Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section.

EFFECTIVE DATE

SEC. 221. (a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 and 305 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States.

(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State.

TITLE III—UNIFORM REAL PROPERTY ACQUISITION POLICY

UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES

SEC. 301. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section [illegible] of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

BUILDINGS, STRUCTURES, AND IMPROVEMENTS

SEC. 302. (a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

EXPENSES INCIDENTAL TO TRANSFER OF TITLE TO UNITED STATES

SEC. 303. The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

LITIGATION EXPENSES

SEC. 304. (a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

REQUIREMENTS FOR UNIFORM LAND ACQUISITION POLICIES; PAYMENTS OF EXPENSES INCIDENTAL TO TRANSFER OF REAL PROPERTY TO STATE; PAYMENT OF LITIGATION EXPENSES IN CERTAIN CASES

SEC. 305. Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

REPEALS

SEC. 306. Sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071–3073), section 35(a) of the Federal-Aid Highway Act of 1968 (23 U.S.C. 141) and section 301 of the Land Acquisition Policy Act of 1960 (33 U.S.C. 596) are hereby repealed. Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section.

Approved January 2, 1971

U.S. Department of Housing and Urban Development
Office of Inspector General

Fraud Information Bulletin

September 1983

83-4

"State and local grantees are responsible and accountable for carrying out their CDBG programs in full compliance with Federal laws and regulations."

Stephen J. Bollinger
Assistant Secretary for Community
Planning and Development

Subgrantees – Problems and Abuses

Purpose

This Fraud Information Bulletin illustrates some problems that HUD grantees encounter when dealing with and monitoring subgrantees. In some cases, grantees do not have procedures to detect and prevent abuse or mismanagement by subgrantees and do not know what problems exist until an outside audit is done. In other cases, grantees have a review system, but do not use it effectively. In all cases, it is important that grantees and other involved parties be aware of the common mistakes, schemes, and trouble areas.

Background

Title I of the Housing and Community Development Act of 1974 authorizes the Secretary to make grants to units of general local governments and to States for the funding of local community development programs. From 1975 through 1982, $29.3 billion was distributed for community development activities. The Assistant Secretary for Community Planning and Development (CPD) oversees programs under this Title I. CPD field offices are responsible for providing advice, evaluating the overall management performance, and/or ensuring that the programs are carried out in accordance with applicable laws and regulations.

A grantee, when implementing grant-supported activities, often contracts with a subgrantee, such as a smaller governmental entity or a community-based/non-profit organization. The subgrantee may implement one or more activities and may have various funding sources. A grantee is responsible for the subgrantee's performance, but many grantees do not effectively monitor subgrantee activities. A recent audit by HUD's Office of Inspector General (OIG) of 63 subgrantees in five regions questioned $2 million in costs and recommended another $850,000 be disallowed; this represented 19 percent of the total contract amounts reviewed.

Applicability

This Bulletin is intended for HUD staff who administer CPD programs and who monitor CPD grant recipients. State employees and local grantees should be aware of problems in this area, as should subgrantees. Third parties, such as Independent Public Accountants and HUD Auditors and Special Agents who review and verify grantee and subgrantee records, should also be familiar with these situations. The following are some of the major problem areas. Although they are not all inclusive, they are indicative of the numerous ways that HUD funds can be misused or mismanaged.

Fraud-Related Problems

Grantees and subgrantees must always be aware of the possibility of fraud and abuse due to poor management or deliberate violation of law.

- A contractor was awarded rehabilitation contracts totalling more than $233,000. At least 50 payrolls which he submitted contained false information regarding employee wage rates. The contractor was sentenced to three years in jail, fined $5,000, and ordered to make financial restitution.

- A city received an $825,000 Small Cities grant and entered into an agreement with a subgrantee to administer the program. The subgrantee's president found several ways to defraud the city:

(1) He deposited a $21,000 check from the city made out jointly to the subgrantee and to the Community Development Block Grant (CDBG) program to his own personal savings account.

(2) He forged the signatures of two city employees on CDBG rehabilitation vouchers and on checks payable to the subgrantee.

(3) He presented a bill and a voucher to the city for $7,500 which included $6,400 that had already been billed to and paid by the city.

Due to these instances of fraud, the president of the subgrantee was debarred from participation in HUD programs for three years. He pled guilty to theft and forgery and was ordered to make financial restitution.

In this case, the city did not have safeguards to prevent a non-city official from having direct access to city funds. The subgrantee maintained the checks to pay for grant-supported activities as well as the only set of CDBG program accounting records. Although the city authorized three individuals to sign program checks, only one signature was required. Only one signature was necessary for claim vouchers. Two official signatures should be required on all checks. An individual authorized to sign claim vouchers should not also have the authority to sign checks.

• A $2 million Urban Development Action Grant was awarded to a city for improvements to a marine industrial park. The city's subgrantee who was administering the grant contracted with a seafood company to obtain a fishery, a drydock, and a small fleet of commercial fishing boats. Two company officials altered letters and forged documents to show increased values for a floating drydock and nine fishing vessels they were to purchase. The forged papers showed an overstated investment value of approximately $1.1 million. This was done by requesting that the boatbuilder submit inflated invoices in return for under-the-table payments. The false invoices were used to get excessive payments from the subgrantee. The subgrantee did not monitor the company or verify its documents and expenses. When the plot was uncovered, officials of the seafood company and of the boatbuilding firm were indicted, convicted, and sentenced to prison.

• A county received a CDBG grant for $371,000 to rehabilitate housing. The county's subgrantee had several work crews headed by trainers. Two of these trainers became independent subcontractors at the same time they were still full-time subgrantee employees. One of these trainers had a personal relationship with the program director. HUD uncovered certain irregularities, including possible double payment for labor and materials. The subsequent investigation disclosed that the program director forged the signatures of some grant recipients certifying that work was completed and paid for when it was not. Payments were made to the contractor with whom the program director had a personal relationship. The program director was convicted of forgery and was sentenced to 13 months in jail. The contractor was convicted of theft and was sentenced to 9 months in prison.

Inadequate Monitoring by Grantees

Grantees should monitor subgrantees carefully to prevent fraud and abuse and to detect it in the early stages. Many problems can be minimized by effective monitoring. Periodic status reports, verification of subgrantee data, and site visits to inspect program activities are critical elements of this strategy.

Failure to adequately monitor subgrantees has produced the following instances of abuse and mismanagement:

• A subgrantee was to administer a low-interest rehab loan program totalling $90,000. After one year, no structures were rehabilitated and none were in the pipeline, but $18,000 in administrative costs were spent

• A city received Urban Development Action Grants totalling $1.4 million, of which $430,000 went to a subgrantee. An audit showed that on one project, they had spent 92 percent of the grant funds but only accomplished 25 percent of the work.

• A grantee did not adequately monitor the financial operations of its subgrantees. Some subgrantees did not put unused drawdown funds into interest bearing accounts. Other excess funds were invested, but because of ineffective monitoring, the grantee did not collect the interest income earned by subgrantees.

Conflict of Interest

Grantees and subgrantees should project a proper business-like atmosphere. They should have safeguards to prohibit employees from using official positions for the purpose of private gain for themselves or others, particularly those with whom they have family, business, or other ties. Grantees and subgrantees should ensure that the identities of all parties are known. This should include the officers and the board of directors of any organizations they are dealing with. The absence of safeguards results in abuse or the appearance of wrongdoing

• An audit of one city showed that 46 percent of all individuals who received services were members of the subgrantees' board of directors. Nineteen percent of the individuals who were helped in obtaining contracts for work through the subgrantee were also board members

• A person who served as Village Administrator (a full time position) was also on a consultant's payroll on a full-time basis.

Abuses in Contracting Processes

OMB Circular A-102 states that contracting procedures should provide for open and free competition, efficient and economical use of funds, efficient contract administration, and

contract pricing in accordance with Federal Procurement Standards. Yet contracting is one of the largest areas of grantee/subgrantee abuse.

• Non-competitive bidding may lead to abuses. In one case, a consultant prepared a grantee's application free in exchange for architectural and engineering contracts totalling $42,000. Another consultant prepared the grantee's application for a fee of $7,300, about 50 percent of the normal fee. The consultant was then awarded a contract of $68,000 for the design, inspection, and supervision of roads, although another qualified firm had bid $35,000 less.

• Another contract abuse is using ineligible contractors. An audit of one grantee disclosed that two subgrantees had used contractors who were ineligible to participate in CDBG programs. Grantees and subgrantees should be aware of the requirement to check contractors against HUD's Consolidated List of Debarred, Suspended, and Ineligible Contractors and Grantees in order to ensure that they are not ineligible for Federal programs. In this particular instance, use of ineligible contractors resulted in $61,000 in costs being disallowed and $260,000 being questioned.

• Lack of contract compliance is another common problem area, as the grantee or subgrantee does not adequately monitor contract performance to ensure the contract is being carried out as specified. For example, a city had a contract with three subgrantees. The contract with one subgrantee stated that project funds were not to be used for general administration, yet the subgrantee used CDBG funds to pay the salary and benefits of a purchasing clerk. The second subgrantee overspent the contract's not-to-exceed figure of $43,000 by $7,000. The third subgrantee contracted to purchase and fix-up a building. An OIG visit six months later showed no work had been done.

Excessive costs result from various contracting deficiencies and abuses including the grantee's failure to perform any cost or price analysis prior to the contract award to ensure that fees are reasonable. Some examples of abuse are:

• A consulting firm's fees were based on an hourly wage scale increased by an overhead factor of 50 to 100 percent. As the hourly rates actually paid to the firm's employees were less than the stated wage scale, contract costs were excessive.

• A firm bills a grantee for overtime but instead of paying overtime to its employees, it gives them compensatory time off.

• A contractor bills a town for certain hours each week and charges a nearby town for hours which overlapped them.

• Grantee and subgrantee cannot demonstrate the need for services nor produce an end product.

• Services are contracted out when they could have been performed more economically or efficiently by the grantee's own employees.

• Contracts are not signed or executed until the performance period has already started or until after the completion of the performance period.

• Contracts are awarded inappropriately on a Cost-Plus-Percentage-Of-Cost (CPPC) basis, contrary to Federal Procurement Standards. This type of contract encourages abuse because the contractor has the incentive to increase costs which results in a higher contract fee.

Two previous Fraud Information Bulletins, 81-1 and 81-3, discuss abuses in the procurement/contracting process in greater detail.

Reported Accomplishments not Properly Documented

Not all subgrantees keep records that verify the accomplishments they report. Sometimes, this is just sloppy recordkeeping. Othertimes, it is done intentionally to cover up work not performed. The following are some examples:

• One city awarded contracts for housing rehabilitation to an subgrantee but did not bother to inspect the work after the subgrantee was finished. An OIG audit showed that of 31 houses reported by the subgrantee to be completed, six were still incomplete.

• A city contracted with a subgrantee to provide drafting service for the rehabilitation of homes of low- and moderate-income persons. Planning and building feasibility studies for recreational activities were also included. The subgrantee was to provide the grantee with copies of all work prepared for program recipients. However, the subgrantee did not have drawings which they had reported as completed.

• A subgrantee which ran a recreation center reported that they conducted 26 activities, but only had records documenting 16 of them. They also reported 925 participants, but only had records for 16 percent of them.

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If you have any comments or any pertinent information regarding this bulletin, please address them to the Director of the Fraud Control Division, Office of Inspector General, Headquarters, Room 8254, FTS 426-6493.

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It is the responsibility of each HUD employee to report promptly any indication of fraud, waste, or mismanagement to

his/her supervisor or to the Office of Inspector General in Headquarters or the Field (HUD Handbook 2000.3A). A telephone Hotline to the OIG is also available: FTS 472-4200.

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Previous Bulletins

80-1 Section 8 Administration
80-2 Standards of Conduct
81-1 Procurement – Contract Award Process
81-2 Multifamily Mortgagor Operations
81-3 Procurement – Contract Administration
81-4 Rehabilitation Activities
81-5 Single Family – Underwriting for Mortgage Insurance
82-1 Departmental Efforts to Combat Fraud and Abuse
82-2 Single Family Property Disposition Program – Repair and Maintenance Activities
83-1 Accountability Monitoring
83-2 Travel
83-3 Administrative Sanctions

September 1983
HUD-648-IG

OFFICE OF MANAGEMENT AND BUDGET

Circular A-102: Uniform Requirements for Grants to State and Local Governments

AGENCY: Office of Management and Budget.

ACTION: Final policy.

SUMMARY: This notice transmits a "single audit" guide for use in audits of State and local governments. The guide was called for by Circular A-102, "Uniform requirements for grants to State and local governments." It replaces almost a hundred individual guides that were previously in use.

In October 1979 a new Attachment P, "Audit Requirements," to Circular A-102 was issued. The attachment resulted from the Administration's program to streamline Federal aid, and is part of OMB's system of guidance for federally assisted programs. The attachment set forth new audit rules for State and local governments (and Indian tribal governments) receiving Federal assistance. It provided for independent audits of financial operations, including compliance with certain provisions of Federal law and regulation, to be made in accordance with a standard audit guide.

The General Accounting Office developed the standard audit guide in cooperation with OMB, the grantmaking agencies, State and local governments, intergovernmental audit forums, and others. Its purpose is to provide a uniform approach to audits of federally assisted programs. It is intended to meet the needs of each Federal, State, and local funding agency for audited financial information.

EFFECTIVE DATE: This audit guide becomes effective March 17, 1980.

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Note.—Copies of this guide will also be available for sale by the Superintendent of Documents in April 1980 (stock number 020-000-00181-0)

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GUIDELINES FOR FINANCIAL AND COMPLIANCE AUDITS OF FEDERALLY ASSISTED PROGRAMS

"RED BOOK"



GUIDELINES FOR FINANCIAL AND COMPLIANCE AUDITS OF FEDERALLY ASSISTED PROGRAMS

UNITED STATES
GENERAL ACCOUNTING OFFICE

FEBRUARY 1980

FOREWORD

This guide is for use in auditing federally assisted programs. It replaces almost a hundred individual program guides that were previously in use. It is issued as part of an overall program of improving government accountability.

The 1960s saw a substantial increase both in the number and dollar amounts of Federal assistance programs. These programs were aimed at improving Americans' daily lives. Major steps were taken to broaden elementary, secondary, and higher educational opportunities; to promote development in economically depressed areas; to help finance health services and medical care for the indigent; to launch a war on poverty; and to attempt a comprehensive physical, social and economic program to transform slum and blight-ridden cities into model neighborhoods.

During the 1970s, the establishment of new grant-in-aid programs slowed considerably. Also, legislation was enacted consolidating a number of existing categorical programs into broader purpose block programs. However, during this period, the dollar amount of Federal assistance continued to grow.

Today 52 Federal agencies administer nearly 1,100 Federal assistance programs. About half of these programs account for almost $90 billion that goes to the governments of all 50 States, 3,000 counties and nearly 90,000 local jurisdictions. In addition, numerous other entities, such as hospitals, universities, and nonprofit organizations benefit from this funding. Most recipients receive funds from several Federal agencies or under several federally assisted programs.

This increase in Federal programs brought with it an increased demand for full accountability by those entrusted with the responsibility for administering the programs. Auditing is an integral element of this accountability, and each agency that provides Federal money is responsible for ensuring that appropriate audits are made of the recipient's records or activities. These audits are performed by Federal auditors, State and local auditors, or by certified public accountants.

A major problem in auditing Federal assistance programs is that the agencies usually restrict their audits to recipient records and financial controls relating to their own programs without concern for other Federal programs administered by the recipient. They do not completely evaluate the recipient's financial controls and pay little attention to how a recipient's management practices affect other agencies' programs. This approach to auditing Federal assistance programs provides little assurance that Federal funds are properly safeguarded and causes duplication of effort.

Ideally, auditing of Federal assistance programs should be accomplished during an organization-wide audit of the recipient's financial operations. Such an audit should assure that the organization's financial records and controls are adequate and should test to determine whether it is in conformance with significant compliance requirements that can have a material effect upon its financial position.

One of the barriers which has inhibited the accomplishment of an organization-wide audit is the multiplicity of audit guides which Federal agencies have prepared for use in auditing their federally assisted programs. In addition, the absence of a standard audit guide which could be used during an organization-wide audit has been an inhibiting factor. For these reasons, the General Accounting Office, the Office of Management and Budget and the Intergovernmental Audit Forum have developed this guide to be used in a comprehensive, organization-wide financial and compliance audit of recipients of Federal assistance programs.

Comptroller General
of the United States

Director
Office of Management and Budget

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ABBREVIATIONS

AICPA	American Institute of Certified Public Accountants
EDP	electronic data processing
OMB	Office of Management and Budget

CHAPTER 1

INTRODUCTION

Federal financial assistance to State and local governmental and other non-Federal domestic organizations has increased from $7 billion in fiscal year 1955 to $90 billion for fiscal year 1980. This assistance is provided through a network of over 1,100 programs administered by 52 Federal departments, agencies, and commissions. The programs are carried out by 50 States, 3,042 counties, nearly 90,000 local governments, and innumerable nongovernmental organizations.

When State or local governments accept funds under federally assisted programs, they assume the responsibility of carrying out the programs efficiently, economically, and effectively. This includes the responsibility of auditing the programs with the same thoroughness that State and local programs are audited. Attachment P to Office of Management and Budget (OMB) Circular A-102 (included as app. III to this guide) calls for an organizationwide audit of grantee financial operations. The audits must include, at a minimum, an examination of the systems of internal control systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations.

Similarly, Federal agencies which fund such programs are also responsible for auditing them. To avoid duplicate audits, the Office of Management and Budget established a Government-wide policy requiring Federal agencies to rely on audits made by non-Federal auditors to the maximum extent practicable. OMB Circular A-73 provides that:

> "Reports prepared by non-Federal auditors will be used in lieu of Federal audits if the reports and supporting workpapers are available for review by the Federal agencies, if testing by Federal agencies indicates the audits are performed in accordance with generally accepted auditing standards (including the audit standards issued by the Comptroller General), and if the audits otherwise meet the requirements of the Federal agencies."

To maximize use of State and local audits, the Federal funding agencies usually provide guidelines on the areas to be covered in the audit of a federally assisted program. Because of the divergence of audit approaches contained in the guidelines issued by the various departments and agencies, several State and local auditors have experienced difficulty in responding to the audit requirements of the Federal agencies. Furthermore, many grantee organizations receive funds from several Federal agencies and under a multitude of programs. Thus, the auditor may find himself auditing several federally assisted programs within an organization and being required to use a different audit guide for each program.

This audit guide is to provide a uniform audit approach and uniform documentation procedures for financial and compliance audits of organizations receiving funds from several Federal agencies or under several federally assisted programs so that the needs of each Federal, State, and local funding agency for audited financial information are satisfied. This will conserve staffing, promote efficiency, and minimize the impact of audits on the auditee's operations.

This guide has been developed primarily for use in audits of State and local governmental organizations. It provides consistent audit practices and documentation procedures, which should increase the potential for coordination of audit efforts at all levels of government. However, it is also appropriate for audits of certain nongovernmental grantee organizations. It is to be used for audits whose scope is limited to financial operations, including compliance with laws and regulations materially affecting financial operation.

CHAPTER 2

GENERAL COMMENTS

For beneficial audits of organizations receiving Federal funds, auditors must use generally accepted auditing standards.

AUDIT STANDARDS TO BE APPLIED

To serve the needs of Federal departments and agencies, financial examinations should be made in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants (AICPA) and incorporated in "Standards for Audit of Governmental Organizations, Programs, Activities & Functions" issued by the Comptroller General in 1972.

If State and local government audits of federally assisted programs meet these standards, the Federal Government should be able to rely on them and thus eliminate the duplicate audit coverage that results when Federal, State, and local auditors independently audit programs and activities without regard to the needs of the other levels of government.

AUDIT PROCEDURES TO BE FOLLOWED

This guide includes mandatory audit objectives, illustrative audit procedures, and documentation guides for audits of general financial activities by the various types of grantees, such as State and local government agencies. The procedures are designed primarily for use in auditing grantee organizations administering multiple programs or activities, including one or more federally assisted programs. The auditor, in addition to this guide, may refer to publications by the AICPA and the Municipal Finance Officers Association, "Industry Audit Guide--Audits of State and Local Governmental Units" and "Governmental Accounting, Auditing, and Financial Reporting."

The material presented relates to the planning of an audit, documentation of audit procedures, the study of internal controls, and the effect of this study on other audit procedures.

AUDIT REPORT TO BE PREPARED

Auditors reporting on the financial statements of organizations administering federally assisted programs encounter transactions funded, in whole or in part, by the Federal Government. For example, an auditor engaged to do a financial

audit of the various funds of a county government would expect to encounter some transactions which involve Federal funds. Such transactions are, in most cases, subject to the same degree of audit scrutiny by the county's auditors as are county funds.

The audit report should contain the overall financial statements of the grantee organization and schedules identifying individual projects for each Federal and State agency. The audit report should also include a statement of scope, opinion, and compliance.

Scope

The scope of the audit should identify the period covered by the audit and the various grants and contracts under which the audited organization received Federal funds. It should include a statement that the examination was made in accordance with generally accepted auditing standards, including the audit standards issued by the Comptroller General.

Opinion

The report should contain an opinion on the financial statements of the organization, including the financial data and related audit results. If an unqualified opinion cannot be expressed, the nature of the qualification should be clearly presented. The auditor's opinion on the financial statements of the organization will satisfy the needs of the Federal funding agencies for audited information. The auditor need not provide a separate opinion on the individual Federal programs the organization operates.

Compliance

The report should contain a statement that the operations of the grantee are in conformance with the compliance requirements which could have a material effect on the financial position of the grantee. The report should indicate the compliance items tested, the nature of the tests performed, the extent of the tests, and the results.

Statements

The audit report should contain such detailed financial statements on the grantees' operations as the grantee prepares. Such statement might include the following.

--Balance sheet:
  All funds
  General fund

Federal grant fund
State grant fund
Other special revenue fund

--Analysis of changes in fund balance--general fund

--Statement of revenue--general fund

--Statement of appropriations, expenditures, and encumbrances--general fund

--Statement of cash receipts and disbursements:
Federal grant fund
State grant fund
Other special revenue fund

--Schedule of questioned costs

Examples of these statements are included as appendix II.

It is not expected that all of the statements be available for every audit engagement. However, they are presented to show how a comprehensive set of financial statements that cover all facets of a grantee's operation can be constructed to meet the needs of all users--grantees, grantors, and the public. As such, these statements serve as a guide for developing required financial statements for multiple-funded organizations.

There is no need to present all of the above listed statements (e.g., for grantees which administer a single Federal grant.) For those grantees it is suggested that the following be presented:

--Balance sheet.

--Statement of appropriations, expenditures, and encumbrances.

--Schedule of questioned costs.

CHAPTER 3

PLANNING THE AUDIT

MULTIPURPOSE AUDITS

Generally accepted auditing standards for fieldwork require that: "The work is to be adequately planned and assistants, if any, are to be properly supervised."

One of the objectives of Federal audit policy is to make one audit satisfy as many Federal and non-Federal needs as possible and practicable. Federal grants are administered in partnership with non-Federal organizations in which the grants represent all or a part of an organization's activities.

The audit approach described in this guide suggests procedures to be employed when one audit is to be made covering all activities, including Federal grant programs, within an audit universe, such as a State department of human resources. The approach presented would also be usable on audits of organizations administering a single audit grant program.

A multipurpose audit requires thorough preliminary planning to insure that audit work is adequately coordinated to achieve the desired results. Such preliminary planning requires that the auditor (1) survey the organization to determine the components of the audit universe by functional area, such as purchasing, payroll, and disbursing, and (2) design supplemental audit steps to test aspects of individual program transactions which may be selected in samples drawn from the total universe of the organization's transactions. Specific approaches to the study of internal control are discussed in a separate chapter.

PRELIMINARY PROCEDURES

Before starting the examination, the auditor should obtain and review key reference material. The types of material which are pertinent will vary, depending on the circumstances, but in general will include:

1. Financial reports issued during the period.

2. Charters, bylaws, incorporation documents, minutes of meetings of the board of trustees or directors, and bank account authorizations.

3. Audit reoprts issued within the past 2 years, including those prepared by internal or external auditors.

4. An executed copy of the grant agreement for each program included within the scope of the audit.

5. The approved budget for each program.

6. Copies of program instructions, agency regulations, and applicable circulars. (See app. IV for a list of Office of Management and Budget circulars.)

7. All major contracts, such as leases, employment agreements, and major purchase commitments, entered into by the organization.

8. The Government-wide cost allocation plan applicable to State and local governments and relevant negotiated indirect cost proposals and agreements (including indirect cost rates and data for educational and nonprofit organizations.)

The auditor should make copies or extracts of those documents he considers necessary for retention in the audit workpapers. Items of audit importance in the above documents should be investigated and documented in the working papers.

In some circumstances, such as audits where there is a large volume of individual grant awards, it may not be practicable or appropriate to review all grant award and budget documents before starting work. In situations of this type, the auditor may choose to:

1. Review grant agreement, approved budget, program instructions, and individual grant financial reports for several material grants (if any) during the preliminary phase of the audit before starting the internal control review.

2. Review the organization's practices and policies relative to administering the grants selected in item 1 above during the study of internal control systems.

3. Determine whether the grant administration practices and policies are applied to all grant programs.

4. Select representative transactions and review the grant award and related compliance requirements for individual grants and programs represented by the transactions.

CHAPTER 4

AUDIT WORKPAPERS

The GAO standards for governmental auditing provide:

"Sufficient, competent, and relevant evidence is to be obtained to afford a reasonable basis for the auditor's opinions, judgments, conclusions, and recommendations."

This standard places upon the auditor the responsibility for accumulating sufficient evidence to provide an appropriate factual basis for his opinions, conclusions, judgments, and recommendations.

Guidance pertaining to workpaper documentation is provided in the audit guide chapters dealing with the study of internal control and tests of account balances.

CHAPTER 5

COMPLIANCE WITH LEGAL AND REGULATORY REQUIREMENTS

GAO's third examination and evaluation standard for governmental auditing is: "A review is to be made of compliance with legal and regulatory requirements." In governmental auditing, compliance with pertinent laws and regulations is particularly important because government organizations, functions, programs, or activities are subject to laws and have more specific rules and regulations than are usually applicable to private organizations.

The auditor is responsible for determining whether the organization, program, function, or activity under audit has complied with laws and regulations which may have a material effect on the grantee's financial position.

Thus, during the financial audit, the auditor is to test the transactions and operations of the audited organization, program, function, or activity, to determine whether that entity is in conformance with significant compliance requirements that can have a material effect upon the grantee's financial position. Specifically, the auditor should establish that the audited entity has not incurred important unrecorded liabilities--contingent or actual--through failure to comply with, or through violation of, pertinent laws and regulations. Three of the most important requirements are recipient eligibility, coverage of services, and matching requirements. If funds are used to provide services to ineligible recipients and/or to provide services not included in the grant award, or if matching requirements are not met, the total amount of the award may have to be returned to the grantor agency.

While these requirements may not cover all significant compliance requirements, they do include some of the most important ones and their verification at least would indicate that funds were used for their intended purpose and matching funds were provided. Other requirements that may be applicable include maintenance of effort, indirect cost rate determination and allocation, and cost principles. Eligibility and matching requirements for all Federal grants can be found in the "Catalog of Federal Domestic Assistance," which is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. The catalog is updated semiannually. Test procedures for auditing costs and expenses (direct and indirect) are included in this guide starting on page 32.

To assure that important unrecorded liabilities do not exist, the auditor should (1) ascertain the significant compliance requirements for each material grant, (2) determine that the grantee has established a system to ensure that these requirements are complied with, and (3) test individual transactions to determine whether the system is working as required.

CHAPTER 6

STUDY OF INTERNAL CONTROL

GENERAL CONSIDERATIONS

The GAO standards for governmental auditing provide:

"An evaluation is to be made of the system of internal control to assess the extent it can be relied upon to ensure accurate information, to ensure compliance with law and regulations, and to provide for efficient and effective operations."

This standard makes the auditor responsible for determining how much reliance can be placed on the audited entity's internal controls to ensure accurate information, ensure compliance with applicable laws and regulations, promote efficiency and economy, and produce effective results. This review will help him determine the extent of detailed examination work that must be performed to achieve the objectives of the audit.

The study of internal control normally has two phases. The AICPA Statement on Auditing Standards No. 1, describes these phases as:

1. Review of the system, which "is primarily the process of obtaining information about the organization and the procedures prescribed and is intended to serve as the basis for tests of compliance and for evaluation of the system."

2. Tests of compliance, which are made "to provide reasonable assurance that the accounting control procedures are being applied as prescribed."

Effect of the method of data processing on the study

In studying internal control, the auditor must consider the method used for processing financial data. Using a computer for processing and recording financial data is widespread and continues to grow. Computer capabilities and applications can be generally categorized as:

1. Simple calculating and compiling operations which produce a hard-copy audit trail.

2. Those systems and applications where the hard copy does not indicate the internal processing that transpired within the machine.

In the later situation, the auditor must consider using tests and review procedures which go beyond traditiona audit techniques. Accordingly, it is expected that auditors undertaking engagements in a sophisticated data processing environment will review the system of data processing and apply appropriate test procedures. However, the auditors must be adequately trained for such work.

The AICPA Statement on Auditing Standards No. 3 describes the impact of electronic data processing (EDP) on the auditor's study of internal control and provides general guidance for the study of internal control in an EDP environment.

Testing methods

In a multipurpose audit of an organization, one of the auditor's objectives is to limit detailed testing of the various programs and activities by reviewing tests of the organization's systems as a whole. It is recommended that the auditor, to draw objective conclusions on the functioning of the system as a whole, use statistical sampling procedures, where possible, in testing compliance with accounting control procedures. Sections 320A (.01 to .24) and 320B (.01 to .24) of the AICPA Statement on Auditing Standards No.1 provide guidance for these procedures.

The foregoing does not preclude the use of judgmental sampling methods on multipurpose engagements but rather recognizes the potential value of statistical measurement on this type of audit.

REVIEW OF THE SYSTEM

During this phase of the study, it is necessary to determine first what controls are present and then make a preliminary evaluation as to the appropriateness of the controls. After completing the preliminary evaluation, the auditor is able to determine how much reliance will be placed on internal controls, subject to tests of transactions, to verify the effectiveness of controls.

It in recommended that the review of internal controls be documented by:

1. Either a written narrative or a flow chart describing the workings of the various accounting-system applications and such other information--types of reports

reconciliations prepared and the frequency of preparation and authorization limits for various types of transactions--which the auditor may need to accumulate to test the various accounting-system applications.

2. The auditor's preliminary evaluation of internal controls. This should include reference to the system's strengths and weaknesses and the auditor's preliminary judgment on the system's potential effectiveness or ineffectiveness. The evaluation should also indicate those aspects of internal control on which the auditor intends to rely, subject to tests of compliance with the system, for limiting tests of account balances.

Regardless of the format used, the documentation of the review should at least indicate (1) the major operating procedures being followed, (2) key accounting documents processed by the system, (3) the flow of information from the initiation of the transaction through the posting of accounting records, (4) the separation of duties within the system's application, (5) the authorization limits for various transactions, such as limited purchase-order approval, and (6) the adequacy of the system for ensuring adherence to Federal cost principles.

A general purpose questionnaire to assist in the review of internal controls is provided as appendix I. The questionnaire is intended to serve as a reminder list to insure coverage of various aspects of internal controls. It does not cover qualitative aspects of controls. The auditor is expected to judge the adequacy of controls on the basis of his evaluations of the circumstances.

TESTS OF RECORDED TRANSACTIONS FOR COMPLIANCE WITH THE SYSTEM OF INTERNAL CONTROLS

The AICPA Statement on Auditing Standards No. 1 describes the rationale for tests of compliance with the system of internal control, as follows:

> "The purpose of tests of compliance is to provide reasonable assurance that the accounting control procedures are being applied as prescribed. Such tests are necessary if the prescribed procedures are to be relied upon in determining the nature, timing, or extent of substantive tests of particular classes of transactions or balances, but are not necessary if the procedures are not to be relied upon for that purpose."

This section contains general guidelines covering the testing of accounting applications at grantee organizations. It should be noted that not all system applications will be present on each audit engagement. In addition, tests of system compliance may not be appropriate where the system is not intended to be relied on as a basis for limiting other audit procedures.

Documentation of recorded transaction tests

The audit workpapers should clearly show the work done in reviewing and evaluating the organization's system of internal control. The AICPA Statement on Auditing Standards No. 1 states that:

> "Although the quantity, type, and content of working papers will vary with the circumstances, they generally would include or show * * * that the [organization's] system of internal control had been reviewed and evaluated in determining the extent of tests to which auditing procedures were restricted* * *."

The statement indicates that the factors which affect the auditor's judgment of the quantity, type, and content of workpapers include:

> "(a) the nature of the auditor's report, (b) the nature of the financial statements, schedules, or other information upon which the auditor is reporting, (c) the nature and condition of the [organization's] records and internal controls, and (d) the needs in the particular circumstances for supervision and review of the work performed by any assistants."

The Federal Government's stated audit policy is to achieve the efficient use of audit resources through better coordinated audit efforts. The full implementation of this policy requires that the audit work have at least common reference points which can be looked at by all potential users when one audit is made to meet the varying needs of different groups. For audit workpapers, that reference point should be guidelines that have been agreed to for documenting audit tests.

Apply the following guidelines or documentation tests of transactions to audits of organizations administering federally assisted programs.

Transactions test objectives are related to the auditor's plans for relying on internal controls for limiting account balance tests. The objectives will vary from audit to audit, depending on the circumstances.

1. Describe transaction test objectives in terms of what the test is designed to establish as to the functioning of specific controls. Also describe types of possible errors that may be found in the test. For example, in describing objectives of an accounts payable test, the auditor would state the control features to be tested (e.g., invoice matching and independent check of extensions) and the types of possible errors (e.g., quantity on invoice does not agree with quantity on receiving report and extensions on invoice are incorrect).

2. Describe the universe for tests using judgmental or statistical sampling, including (a) the types of items in the universe, (b) the period over which the items were accumulated, (c) the size of the universe, (d) the activities or funds covered by the system, and (e) the similiarity of items constituting the universe. For example, in a test of cash disbursements, the auditor could include a description having (a) checks drawn on the organization's bank account from July 1, 1973, through June 30, 1974, (b) the checks used during the period were 1,456 through 2,851, or 1,395 checks, (c) the cash disbursement system processed checks covering the organization's general fund and two Federal programs (describe the programs), and (d) the universe includes all checks drawn by the organization.

3. When employing statistical sampling, the workpapers should include a sampling plan containing the sample size, precision, confidence levels, and estimated error rates.

4. Describe the method of selecting the sample.

5. Record the test steps applied to sample transactions. A detailed audit program or annotations on audit test papers would serve this purpose.

6. Record the results of tests, including lists of errors and exceptions; followup actions; and, in the case of statistical tests, the results, including precision.

7. The final piece of documentation is the auditor's conclusions on the effect of test results on other auditing procedures (substantive tests) to be used in the balance of the audit.

The documentation guidelines provide a reference point for Federal auditors and non-Federal auditors. These guidelines do not deal with the form of workpapers but rather provide a broad methodology which should result in workpapers with common general characteristics.

ILLUSTRATIVE PROGRAMS FOR TESTS OF RECORDED TRANSACTIONS

Transaction test objectives are related to the auditor's plans for relying on aspects of internal controls to limit tests of account balances. If the auditor wishes to rely on various functions and aspects of internal controls, he should establish objectives to cover those functions and aspects.

The test procedures for the transaction tests vary, depending on the circumstances. For example, if the auditor plans little or no reliance on internal controls within a particular accounting application, then he will have to expand his testing of the transaction but perform little or no audit procedures during his study of the internal control system. There are other factors affecting the selection of audit procedures, documents, and records. The auditor must use his own judgment in determining test objectives and appropriate audit procedures.

Listed below are illustrative audit procedures and test objectives for tests of compliance with accounting system applications.

Cash receipts

Audit objectives

Test objectives of cash receipts are to establish that:

1. Cash which should have been received is, in fact, received.

2. Cash received is deposited promptly and intact.

3. Cash drawn by check or letter of credit, funded by the Federal Government, is not in excess of immediate requirements.

4. Cash receipts are accurately recorded in the accounting records.

5. The account records for cash receipts agree with bank records of receipts.

Illustrative test procedures

1. Review the cash receipts records and the general ledger cash accounts for unusual items, such as large amounts or entries from other than cash journals.

2. Test footings and crossfootings of the cash receipts records.

3. Compare remittance advices with the postings to cash receipts and receivable records.

4. Test for agreement of entries on bank statements with the daily cash receipts amounts contained in cash receipts records.

5. Test the posting of cash receipts' records to the general ledger cash account and receivable detail records.

6. If cash receipts for federally assisted programs are commingled with other cash, then test for the posting of credits to applicable fund control accounts.

7. Test the postings of undeposited cash receipts to receivable records.

8. Test the recording of miscellaneous receipts, such as the proceeds from sales of property and equipment.

9. Compute the average daily cashbook balance for funds drawn under Federal letters of credit or advance payments for several random months during the audited period.

Cash disbursements

Audit objectives

Test objectives for cash disbursements are to establish that:

1. Disbursements are authorized. This objective is achieved either as part of the cash disbursement test or as part of the accounts payable test, depending on whether transactions are controlled by a voucher register. If a voucher register is used to control accounts payables, then the objectives are achieved as part of the accounts payable test. If not, the objectives are achieved as part of cash disbursements.

2. The amount of the disbursement is proper.

3. Disbursements are properly recorded, i.e., correct payee, amount, date, and account distribution, in the accounting records.

4. Disbursements are adequately supported by documentation and made for the purposes intended.

Illustrative test procedures

General tests

1. Examine the cash disbursements journal for unusual items, such as large amounts and checks drawn to cash. Investigate items noted.

2. Test the footings and crossfootings of the cash disbursements journal.

3. Account for the numerical sequence of checks for a test period.

4. Test postings of cash disbursements from the cash disbursements journal to the general ledger, and if applicable, to the voucher register and subsidiary ledgers.

5. Test petty cash reimbursement vouchers for support and approval.

Test of sample disbursement transactions

For each item selected:

1. Test paid checks to the cash disbursements journal and to supporting documents and determine that payees, amounts, and dates agree.

2. Determine that documents in support of disbursements were canceled to prevent their reuse.

3. Test signatures on paid checks against a list of authorized signers.

4. Compare endorsements with indicated payees. Investigate any double endorsements.

Purchasing, receiving, and accounts payable

Audit objectives

The objectives of purchasing, receiving, and accounts payable tests are to establish that:

1. Purchases of goods and services were properly authorized.

2. Purchases were made in accordance with established policies and procedures.

3. Purchase transactions were properly recorded in the accounting records on the dates transactions were completed.

4. Charges to federally assisted programs arising from purchase transactions conform to (a) cost principles prescribed under pertinent Federal circulars, (b) the terms of the grant or loan documents, and (c) the established policies of the organization. 1/ (See app. IV for a list of circulars.)

Illustrative test procedures

Preface

1. The sample program presented below assumes that purchase transactions are recorded in a voucher register. If the organization is on a cash basis or controls payables through a payable or accrual listing prepared at period end only, the review of charges for goods and services can be done as part of the cash disbursements test.

2. To achieve objectives 2 and 4 above, relating to transactions incurred under federally assisted programs, the audit program must be sufficiently detailed to cover specific program criteria. The audit program should be referenced to applicable

1/When there is a conflict, categories (a) and (b) take precedence over category (c).

Federal circulars which establish principles for determining allowable costs of the organization. In addition, the program should be modified to include applicable provisions of the grant or loan and agency regulations dealing with allowable costs.

Program steps

General tests

1. Review the general ledger accounts for accounts payable and accrued expense and the voucher register for unusual items or entries, such as large amounts. Investigate items noted.

2. Review files of unmatched invoices, receiving reports, purchase orders, and shipping documents, to determine whether such items are current.

3. Test the numerical sequence of purchase orders.

4. Test footings and crossfootings of the voucher register and trace postings to the general ledger and subsidiary ledgers.

5. Review indirect cost categories in the cost allocation plan against the cost categories for indirect cost on the trial balance.

Test of sample purchase transactions

For each purchase transaction sample item selected:

1. Test each purchase order against requisitions:

   a. Inspect competitive bids to see if the amount of purchase meets the minimum requirements for this procedure.

   b. When possible, verify prices using vendor catalogs or price lists.

2. Test each vendor invoice as follows:

   a. Compare amounts and terms of invoice to purchase order.

   b. Compare items and quantities listed on the invoice to receiving report or evidence of receipt of services.

c. Trace items listed in the voucher register, such as amount, transaction date, distribution of charges, program charge code, to the invoice.

d. Test invoice footings and extensions.

3. For each sample item representing a charge to a federally assisted program:

a. Determine whether expenditure is contemplated in approved budget.

b. Determine whether prior approval of the granting agency was obtained for those purchases subject to that requirement. (Refer to grant agreement and applicable Federal circular.)

c. Determine whether classification of direct or indirect charges is in accord with cost allocation plan or grant agreement.

d. Test the types of expenditures selected for sample against standards for selected items of cost set forth in applicable Federal circulars, agency regulations, or grant terms. List as exceptions those items not meeting the prescribed standards.

Payroll

Audit objectives

The objectives of the payroll tests are to establish that:

1. Employees shown on the payroll records are authorized and hired in accordance with the organization's administrative requirements.

2. Payrolls are accurately calculated on the basis of authorized rates of pay.

3. Payroll deductions are made in accordance with existing legal requirements and contractual agreements.

4. Payroll transactions are accurately recorded in the accounting records.

5. Employees charged to federally assisted programs are authorized by the approved budget.

6. Fringe benefit arrangements affecting Federal grant programs are consistently applied to all the organization's operations, including non-Federal activities.

Illustrative test procedures

General tests

1. Test footings and crossfootings of payroll registers and trace posting to the general ledger and subsidiary ledgers.

2. Compare payroll charges in the general ledger to budget categories and investigate discrepancies.

3. Witness the distribution of payroll checks on a surprise basis.

4. Review charges to the various categories of fringe benefits and determine whether the benefits:

a. Are authorized in the organization's personnel policies.

b. Are generally considered under the category of fringe benefits and not profit-sharing arrangements.

Test of sample payroll transactions

For each payroll sample item selected for test:

1. Trace hours paid to appropriate time records--clock cards and timesheets.

2. Review individual hiring record or employment contract and determine whether rate of pay is authorized.

3. Inspect authorization or approval for overtime payments.

4. Test deductions from pay for authorization.

5. Test payroll distribution to supporting evidence, such as department rosters and approved time allocation sheets.

6. Test computation of gross and net payment.

7. Compare endorsement on payroll check with signature on W-4 form.

The following are additional steps for payments charged to federally assisted programs.

1. Compare the position description for which payment was made to the approved grant budget.

2. Test payment rate:

   a. For compliance with Federal minimum wage.

   b. To determine whether rate of pay is consistent for similar work in other activities of the organization.

   c. For compliance with the terms of the grant if the position is specifically covered in the agreement.

3. If the organization has developed a fringe benefit rate, review for reasonableness and equitable application to all payroll costs. Also determine that no elements making up the fringe benefit pool have been included in direct labor charges.

Billings and receivables

Audit objectives

Test objectives of billings and receivables are to establish that:

1. Billings represent valid claims for goods shipped or services received and are based on established pricing policies.

2. Billings and related receivables are recorded on the date when the transaction is completed.

3. Noncash credits to receivable accounts are appropriately authorized and supported and are made in accordance with the organization's established policies.

4. Billings and receivables are accurately recorded in the accounting records.

Illustrative test procedures

General tests

1. Test footings and crossfootings of billing registers and test postings to the general ledger and subsidiary ledgers.

2. Test the cutoff in processing and recording billings and noncash credits to receivables.

3. Test the numerical sequence of a series of completed invoices and shipping documents (bills of lading).

4. Test footings and extensions of aged trial balance of receivables. Trace totals to general ledger balances and test aging against subsidiary ledgers.

5. Test the records of goods ordered and services requested to shipping and service records.

6. Test shipping document files and the records of services peformed to determine whether billings were prepared.

7. Test noncash credits to receivables by reviewing support and authorizations.

Detailed tests

Select a sample of billings and:

1. Test pricing to price lists, contracts, or other authorizations.

2. Test the shipment quantities or descriptions of services to shipping or service records. Note lags between dates of shipment or rendering of services and the billing dates.

3. Test the footings and extensions on the billing.

4. Test the recording of billings to the billing register and subsidiary ledgers. Test for posting of names, dates, amounts, and account distributions.

Property and equipment

Internal control tests over property and equipment can be made in conjunction with property and equipment account balance tests.

Audit objectives

The objectives of control tests over property and equipment are to establish that:

1. Recorded property and equipment exists and is being used in the operation or programs for which they were acquired or to which they are charged.

2. Property and equipment acquisitions and disposals have been properly authorized, approved, and recorded.

3. Charges to grant programs for depreciation or use allowances were properly computed in accordance with applicable Federal cost principles and the terms of the grant agreements.

Sample test procedures

1. Obtain a summary of charges to grant program accounts representing asset acquisition, depreciation, or use allowances.

   a. Test mathematical accuracy of the schedule.

   b. Trace totals to general ledger accounts.

   c. Trace opening figures to prior audit papers, if available.

2. Test selected items to determine whether the expenditures or charges for depreciation or use were contemplated by the approved budget.

3. For acquisitions of property and equipment:

   a. Review purchase orders for required approvals.

   b. Determine whether requirements for competitive bidding, if applicable, were met.

4. Test the calculation of depreciation or use allowances.

   a. Verify mathematical accuracy of the depreciation calculation.

   b. Determine whether the depreciation or use charge was based on acquisition costs or a reasonable estimate of same.

   c. Determine whether the method of computing depreciation has been consistently applied to similar assets for all Federal programs the organization administered.

   d. Compare use allowance rates claimed with the limitations for such allowances contained in Federal regulations.

5. On a selected basis verify the physical presence of assets charged to programs or activities. Determine whether the programs or activities charged with the assets or depreciations are benefiting from the assets. (Are the assets being used for programs other than the one charged?)

Evaluation of test results

As previously stated, the auditor's study and evaluation of internal control is to determine the extent to which other audit procedures can be restricted.

After completing the tests of accounting system applications, the auditor should evaluate the test results and draw final conclusions on internal controls. The evaluation should lead the auditor to confirm or reject the preliminary evaluation of internal controls. The conclusions should be shown in the selection of audit procedures for the account balance tests that will follow.

The final evaluation of internal controls should be referenced to (1) preliminary evaluation of controls, (2) test of transaction workpapers, and (3) the audit program procedures to be followed in testing account balances.

Concerning item 3 above, the auditor is expected to indicate the basis for selecting procedures by way of a note to the audit program or in a memorandum accompanying the sections of workpapers dealing with account balance tests.

CHAPTER 7

TESTS OF ACCOUNT BALANCES AND OTHER AUDIT PROCEDURES

INTRODUCTION

The balance of the procedures used in determining the fairness of the financial statements and/or the allowability of costs depends on the materiality of transactions and balances, the auditor's evaluation of internal controls, and the nature and scope of the audit report issued.

The material which follows deals with approaches to testing account balances. For each account or type of account, there is a listing of illustrative audit procedures and a discussion of the potential impact of internal control conditions in selecting procedures.

GENERAL PROCEDURES

The auditor should:

1. Obtain a working trial balance of the general ledger balances and verify them with the general ledger accounts.

2. Trace balances from the working trial balance to grant report.

3. Obtain approved budgets covering the operation, including those applicable to federally assisted programs administered by the organization. Determine whether the expenditures proposed in the budget are authorized by line item for the various programs and activities.

4. Compare the expenditure accounts from the general ledger trial balance with the approved budget and determine if budget authorizations were exceeded.

BALANCE SHEET ACCOUNTS

The balance sheet accounts, for which illustrative audit procedures have been provided, are not all inclusive of the types of accounts which may be encountered in an audit of a particular grantee organization. The section of AICPA's "Industry Audit Guide--Audits of State and Local Governmental Units" dealing with audit procedures for certain asset, liability, and fund balance accounts describes other accounts which may be present at non-Federal governmental organizations. This material, which describes the general workings

of certain accounts and types of procedures that the auditor should consider, should be reviewed in connection with examination of governmental units.

Cash balances

The objective of the examination of cash balances is to determine whether such balances are owned and are either on hand or on deposit in a banking institution.

Illustrative test procedures

1. Obtain a schedule of cash balances.

2. Count cash funds on hand and confirm bank balances. The confirmation should request information from the bank related to loans, letters of credit, contingencies, guarantees, and collection items.

3. Review bank reconciliations at period end and obtain and review cutoff bank statement after the audit period.

4. Review cutoffs of cash disbursements and cash receipts.

5. Count petty cash.

Discussion

When drafting the audit program for use in examining cash, the auditor should consider the evaluation of internal controls over the processing of cash receipts and disbursements.

If the internal controls over cash are evaluated as weak, the procedures used should reflect little or no reliance on the organization's poor practices. For example, the auditor may prepare the bank reconciliation rather than use review procedures. The auditor might also examine bank reconciliations for periods before and after the financial statement date. If controls over the posting of cash records are evaluated as weak, the auditor should consider extending cutoff tests and possibly reconciling the cash-book balances against the bank statements.

If internal controls over cash are evaluated as strong, the auditor could limit tests of cash funds to confirmation of bank balances, review of the organization's bank reconciliation, and performance of limited cutoff procedures.

Receivable balances

The objectives of examining receivable balances are to determine that such balances are properly recorded and reflect valid claims in amounts deemed to be collectible.

Illustrative test procedures

1. Obtain aged listing of receivable balances (retain copy of summary for the working papers).

2. Verify the mathematical accuracy of the listing and test individual items to the customer's ledgers, and trace the listing total to the general ledger account.

3. Confirm receivable balances.

4. If applicable, examine notes evidencing indebtedness and inspect collateral.

5. Verify the amount of any interest accrual.

6. Determine the adequacy of reserves for uncollectible receivables. Consider such items as age of receivables, credit reports, and collection actions taken to date.

7. Review noncash credits to receivables, such as allowances and bad debt writeoffs. Determine if such reductions of receivables were properly authorized and adequately supported.

8. Perform cutoff procedures on billings and noncash credits to receivables.

Discussion

When drafting the audit program for use in examining receivables, the auditor should consider the evaluation of internal controls over the processing of billings and cash receipts and the maintenance and administration of receivable records. In addition to the general illustrative procedures described below, auditors of non-Federal governmental organizations should consider using the procedures listed on pages 58 to 60 of AICPA's "Industry Audit Guide--Audits of State and Local Governmental Units." The material discusses procedures for auditing various types of receivables found in governmental organizations.

Some of the illustrative procedures listed above, such as confirmation of receivable balances, may be performed at a point before the close of the financial period under audit. If this is the case, the auditor must consider how to update this work at the close of the period. The auditor should also consider the materiality of transactions during the intervening period as well as his evaluation of internal controls.

The auditor may choose to restrict the account balance work on noncash credits to receivables if these transactions were adequately tested in the internal control study phase. The account balance work in that case may be limited to cutoff procedures and review of comparative or budgeted balances.

In selecting the confirmation procedures the auditor needs to evaluate a number of factors, including:

1. The type and materiality of account balances.

2. The prospects of debtors' response.

3. Available alternatives for nonresponses.

Investments

The objectives of examining investments are to determine:

1. The existence and ownership of recorded investments.

2. That the carrying value of investments is not permanently impaired by a reduction in market value.

3. That income from the investment is properly accrued and recorded.

Illustrative test procedures

1. Obtain a schedule showing (a) investment activity during the audit period--opening balances, purchases, sales, and ending balances--and (b) investment income, including accruals, for accrual basis statements.

2. Verify the mathematical accuracy of the schedule and trace the investment and income balances to the general ledger.

3. Confirm or count and inspect investment securities.

4. Test advices or invoices supporting the purchase and sale of investments.

5. Review the organization's charter or bylaws to determine that the types of investments made are in accordance with those provisions.

6. Determine that investment purchases and sales are properly authorized and approved.

7. Obtain market value information on investments held at the end of the period. Consider need for writing down investments which appear to have sustained a permanent reduction from carrying value.

8. Test investment income through calculation or by reviewing published information for dividends.

Discussion

The materiality of transactions and balances together with internal controls related to receipts and disbursements will determine the extent of investment and income tests.

Before examining investments, the auditor should become familiar with legal restrictions and regulations affecting the organization's investments. Certain types of investments may be prohibited by statute, charter, or bylaws. In addition, there may be restrictions on retaining investment income, as is the case when advances of Federal categorical grant funds are invested by a unit of local government.

Accounts payable and accrued expenses

The objectives of the examination of accounts payable and accrued expenses are to determine that:

1. Recorded liabilities and accruals represent valid obligations for the period under audit.

2. All valid obligations are recorded.

Illustrative test procedures

1. Obtain a listing of accounts payable and accrued liabilities and test the mathematical accuracy of the listings.

2. Trace the totals of the listings to the general ledger accounts.

3. Test vendor invoices and examine calculations and other support for payable and accrual items.

4. Test payments of payables and accruals after the audit date.

5. Consider confirming payable and accrual items.

6. Compare accrual items to prior period balances and investigate major differences.

7. Review the accrual for payroll and fringe benefits.

8. Perform a test for unrecorded liabilities by reviewing

   a. the cash disbursement journal and voucher register transactions after the audit date and

   b. unentered invoices, unmatched purchase orders, and receiving reports.

Discussion

The internal controls over cash disbursements, payroll, purchasing, accounts payable, and receiving, together with the materiality of transactions and balances should be considered in drafting the liability and accrual program. The auditor should consider confirmation of creditors when internal controls are evaluated as weak or when the accounts payable consists of few balances of relatively large amounts.

Applicable internal control procedures should result in reducing the amount of work needed to establish the reasonableness of the accounts payable and accrual balances. However, regardless of the strength of internal controls, some work should be done to establish that a proper cutoff was made in recording payables and accruals.

COSTS AND EXPENSES

The types of costs and expenses found in grantee organization audits vary, depending on the types of programs the organization administers. Criteria for allowability of costs are contained in OMB circulars and in the applicable program regulations, which were reviewed during the internal control study phase of the audit.

The examination of cost and expense balances is related to and affected by other work done previously, including:

1. The internal control study of cash disbursements, accounts payable, purchasing, and receiving.

2. The review of contract terms and budget versus actual comparisons.

3. The review of certain asset and liability account balances.

Other factors affecting the audit program for examining costs and expenses are the materiality of transactions and balances and the degree of restriction contemplated by the various grant programs. For example, grant programs with relatively broad categories of allowable costs and little or no restrictions as to transfers between budget categories require less detailed examinations than do grant programs with more restrictive provisions.

The test should cover costs charged directly to the program, together with those costs which are, in part, allocated to the program, such as indirect costs.

The degree of additional examination of individual cost and expense transactions will vary according to the impact of the items discussed above. If, for instance, internal controls were evaluated as weak in the approval of transactions and appropriateness of costs and expenses incurred, the auditor might extend tests to cover a large part of these costs. If, however, internal controls were evaluated as strong, the auditor might limit the remaining work to (1) examining only a small number of material transactions, (2) if applicable, reviewing limitations on the maximum amount of indirect costs chargeable to a program, and (3) a line item comparing budget to actual expenditures with followup on overruns, if applicable, and major underruns.

PROGRAM FUNDING

Review grant terms and program regulations to determine the basis for calculating the Federal share.

1. The test of Federal and non-Federal contributions to the program should be made after completing audit tests and preparing audit adjustments for program expenditures. Adjustments may be required for such items as cutoff errors (expenditures of funds prior to receipt of grant award) and those costs which the auditee agrees are clearly unallowable. The auditor should prepare a dual calculation of Federal contributions in those instances where the auditee does not agree with the auditor's proposed adjustments. The calculations should be based on (a) the auditee's program costs and questioned costs and (b) program costs with questioned costs removed.

2. Some grant programs provide for Federal funding at different rates for different costs categories. The auditor should be alert to such requirements and should test the matching share on the prescribed basis.

3. The requirements of the source and type of matching funds to be provided as the non-Federal share varies among the programs. As part of the test to determine the organization's compliance with matching-share requirements, the auditor should determine the rules applicable to the programs under audit. If the grant program provides that funds obtained from other Federal programs not be used for matching on the program under audit, then the auditor must determine the source of the organization's funds. In-kind contributions should be tested against the criteria contained in applicable Federal circulars and granting-agency regulations.

INDIRECT COSTS

Where the organization has an approved indirect cost allocation plan, the auditor should examine the costs charged to the indirect expense pool and determine that:

1. The indirect costs accumulated in the expense pool are in conformity with the approved plan.

2. The indirect costs accumulated in this expense pool are not also charged directly to some projects.

3. The indirect cost rate applied by the grantee organization agrees with the rate negotiated under the approved plan.

If the grantee does not have an approved indirect cost allocation plan, the auditor should examine the supporting documentation for indirect costs charged to grants and determine whether:

1. The indirect costs can be reconciled to financial statements or books of account.

2. The methods of allocating expenses are in accord with generally accepted accounting practices.

3. Costs incurred for the same purpose are not treated as indirect costs and also charged to projects.

4. The data (e.g., square footage, population, and salaries) included in the proposed bases is current and accurate.

5. The expense is reasonable and properly allocable.

6. The indirect expense pool contains only items that are consistent with the applicable cost principles.

7. The proposed expenses were incurred within the period under review.

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INTERNAL CONTROL REVIEW QUESTIONNAIRE

AND DOCUMENTATION GUIDE

The material which follows was designed as an aid in reviewing internal controls. It consists of controls and suggestions for items which should be documented in the workpapers. The documentation items are in parentheses following certain questions. For the most part, the suggested documentation items have been recommended because auditors may wish to verify the related control aspects or procedures in the internal control-testing phase, if they intend to rely on the particular aspect in limiting the tests of account balances.

The questionnaire and documentation material does not purport to cover all aspects of internal control present at a particular organization. The material is designed to provide basic coverage, and the auditor should select those questions and documentation procedures most applicable to the system of internal control being audited.

The material does not address controls that may be present in an EDP environment nor compliance aspects which may be required under a particular categorical grant or loan program. Accordingly, the questionnaire and documentation material should be expanded to provide appropriate coverage of these areas.

The questionnaire should be retained in the workpapers. The auditor may choose to use this material only as a checklist and to document the review through memorandums, analysis papers, and flow charts.

GENERAL

The following questions relate to the internal accounting controls of the overall organization.

1. Are duties for key employees of the organization defined?

2. Is there an organization chart which sets forth the actual lines of responsibility?

3. Are written procedures maintained covering the recording of transactions?

   a. Covering an accounting manual?

   b. Covering a chart of accounts?

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4. Do the procedures, chart of accounts, etc., provide for identifying receipts and expenditures of program funds separately for each grant?

5. Does the accounting system provide for accumulating and recording expenditures by grant and cost category shown in the approved budget?

6. Does the organization maintain a policy manual covering

   a. approval authority for financial transactions and

   b. guidelines for controlling expenditures, such as purchasing requirements and travel authorizations?

7. Are there procedures governing the maintenance of accounting records?

   a. Are subsidiary records for accounts payable, accounts receivable, etc., balanced with control accounts on a regular basis? (List the types of records and the timing of reconciliation procedures.)

   b. Are journal entries approved and explained or supported?

   c. Do accrual accounts provide adequate control over income and expense?

   d. Are accounting records and valuables secured in limited-access areas?

8. Are duties separated so that no one individual has complete authority over an entire financial transaction? (Document the segregation of duties or lack thereof affecting accounting system applications.)

9. Does the organization use an operating budget to control funds by activity?

10. Are there controls to prevent expenditure of funds in excess of approved, budgeted amounts? For example, are purchase requisitions reviewed against remaining amount in budget category?

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11. Has any aspect of the organization's activities been audited within the past 2 years by another governmental agency or independent public accountant? 1/

12. Has the organization obtained fidelity bond coverage for responsible officials? (Indicate the officials covered and the amounts of coverage.)

13. Has the organization obtained fidelity bond coverge in the amounts required by statutes or organization policy?

14. Are grant financial reports prepared for required accounting periods within the time imposed by the agencies? (Indicate the types of reports and the due dates.)

15. Does the organization have an indirect cost allocation plan or a negotiated indirect cost rate?

CASH RECEIPTS

The following conditions are indicative of satisfactory control over cash receipts.

1. The individual responsible for the cash receipts function does not sign checks or reconcile the bank accounts and is not responsible for noncash, accounting records, such as accounts receivable, the general ledger, or the general journal.

2. Receipts are deposited promptly and intact.

3. Current receipts are controlled by registers.

4. The organization has established procedures to minimize the time elapsing between the transfer of funds from the Federal Government and their disbursement.

The material which follows is designed to assist the auditor in reviewing and documenting the cash receipts function.

1/Pertinent prior audit reports, together with the organization's replies to audit comments, should be reviewed in connection with the current examination. The current workpapers should indicate key findings from this review.

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1. Incoming mail:

   a. Are remittances listed on a control sheet for comparison with the bank deposit ticket?

   b. Are the check remittances restrictively endorsed by the person opening the mail?

2. Are all receipts required to be recorded promptly and deposited intact daily or at appropriate regular intervals? (Describe the practice followed.)

3. Does the cashier prepare duplicate deposit tickets so that one copy can be signed by the bank and returned for checking against the cash receipts record by another person?

4. Is the person receiving cash without authority to sign checks and reconcile bank accounts and without access to accounting records other than cash receipts?

5. Are currency receipts controlled by cash registers, vending machines, or controlled prenumbered receipt forms?

PROGRAM RECEIPTS FROM THE FEDERAL GOVERNMENT

1. Does the organization have grant agreements providing for funding under requests for advance payments or letters of credit? (Describe the method of funding.)

2. Does the organization have procedures, including cash requirement projections, minimizing the time between the transfer of funds from the Federal Government and their disbursements?

3. Are Federal funds deposited in a separate bank account or accounted for through grant-loan fund control accounts?

4. Does the organization's calculation of Federal funds required consider updated estimates of allowable program costs?

BILLING AND RECEIVABLES

The following conditions are indicative of satisfactory control over billing and receivables.

1. There are controls to insure that all goods shipped and services performed are billed and recorded.

2. Billing is by serially numbered invoices.

3. All documents supporting billings, such as shipping orders and service tickets, are also serially numbered.

4. Price lists or contractual terms covering goods and services are used for computing billing amounts. Exceptions to price list amounts are approved by an organization official.

5. Detailed receivable records are periodically balanced with the general ledger control accounts.

6. Noncash credits to receivables are approved by an organization official.

7. An aged trial balance of receivables is periodically prepared and followup action is taken on overdue balances.

8. Duties are adequately separated so that the individual responsible for maintaining the receivable records does not have access to cash, approve credit to customers, authorize noncash credits to receivables, or authorize shipments of goods or performance of services.

BILLINGS

The material which follows is designed to assist the auditor in reviewing and documenting the billing and receivable functions.

1. Is the billing department notified of charges to be billed (a) for merchandise shipments, by receiving a copy of the shipping documents directly from the shipping department or (b) for services performed, by receiving a copy of the record of services performed directly from the individual or group performing the services? (Describe the practice followed.)

2. Are shipping documents and services records prenumbered and correlated with billing invoices?

3. Are billing invoices prenumbered and accounted for?

4. Are billing prices based on standard price lists or contractual agreements? (Describe procedure.)

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5. If billing amounts are not based on standard price lists or contracts, are amounts approved by an official outside the billing department?

6. Are prices and extensions on billings independently verified?

7. Is a copy of the billing invoice sent directly to the accounts receivable departments?

8. Are there procedures to control the issuance of free merchandise and services? (Describe controls.)

9. Are there procedures to control the receipt of funds for miscellaneous transactions, such as (a) the sale or rental of property and equipment and (b) income from investments? (Describe procedures.)

RECEIVABLES

1. Are receivables detail ledgers periodically balanced with general ledger control accounts? (Describe practice.)

2. Are statements of account periodically prepared and mailed to debtors?

3. Are aged trial balances of receivables periodically prepared and reviewed by the credit department or some designated employee not responsible for billings, cash, or receivables? (Describe procedures.)

4. Are notes receivable approved by an official before they are accepted by the organization?

5. Are notes and collateral periodically inspected by someone other than the custodian?

6. Is there control over followup action on delinquent accounts? (Describe the control procedures.)

7. Are noncash reductions of receivables approved by an organization official?

8. Are there controls over advances to and receivables from employees?

PURCHASING, RECEIVING, AND ACCOUNTS PAYABLE

The following conditions are indicative of satisfactory control over purchasing, receiving, and accounts payable.

1. Prenumbered purchase orders are used for all items of cost and expense.

2. There are procedures to insure procurement at competitive prices.

3. Receiving reports are used to control the receipt of merchandise.

4. There is effective review by a responsible official following prescribed procedures for program coding, pricing, and extending vendors' invoices.

5. Invoices are matched with purchase orders and receiving reports.

6. Costs are reviewed for charges to direct and indirect cost centers in accordance with applicable grant agreements and applicable Federal Management Circulars pertaining to cost principles.

7. When accrual accounting is required, the organization has adequate controls, such as checklists for statement-closing procedures, to insure that open invoices and uninvolved amounts for goods and services received are properly accrued or recorded in the books or controlled through worksheet entries.

8. There is adequate segregation of duties in that different individuals are responsible for (a) purchase (b) receipt of merchandise or services, and (c) voucher approval.

The following questions are designed to assist the auditor in reviewing and documenting the purchasing, receiving, and accounts payable functions.

PURCHASING

1. Is the purchasing function separate from accounting and receiving?

2. Does the organization obtain competitive bids for items, such as rental or service agreements, over specified amounts? (Indicate the amounts.)

3. Is the purchasing agent required to obtain additional approval on purchase orders above a stated amount? (Indicate the amount.)

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4. Are there procedures to obtain the best possible price for items not subject to competitive-bidding requirements, such as approved vendor lists and supply item catalogs? (Describe the procedures.)

5. Are purchase orders required for purchasing all equipment and services?

6. Are purchase orders controlled and accounted for, by prenumbering and keeping a logbook? (Describe method.)

7. Do grant-loan agreements or related regulations impose requirements which differ from the organization's normal policies, such as competitive-bid requirements? (List exceptions.)

8. Is the purchasing department required to maintain control over items or dollar amounts requiring the contracting officer's advance approval? (If yes, describe controlling factors.)

9. Under the terms of OMB Circular 74-4, certain costs and expenditures incurred by units of State and local governments are allowable only upon specific prior approval of the grantor Federal agency. Determine whether the grantee organization has established policies and procedures governing the prior approval of expenditures in the following categories.

   a. Automatic data processing costs.

   b. Building space rental costs.

   c. Costs related to the maintenance and operation of the organization's facilities.

   d. Costs related to the rearrangement and alteration of the organization's facilities.

   e. Allowances for depreciation and use of publicly owned buildings.

   f. The cost of space procured under a rental-purchase or a lease-with-option-to-purchase agreement.

   g. Capital expenditures.

   h. Insurance and indemnification expenses.

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   i. The cost of management studies.

   j. Preagreement costs.

   k. Professional services costs.

   l. Proposal costs.

10. Under the terms of OMB Circular 74-4, certain costs incurred by units of State and local governments are not allowable as charges to Federal agency grants. Determine whether the grantee organization has established policies and procedures to preclude charging Federal grant programs with the following types of costs.

   a. Bad debt expenses.

   b. Contingencies.

   c. Contribution and donation expenditures.

   d. Entertainment expenses.

   e. Fines and penalties.

   f. Interest and other financial costs.

   g. Legislative expenses.

   h. Charges representing the nonrecovery of costs under grant agreements.

   i. The expenses of a State Governor or chief executive of a political subdivision.

RECEIVING

1. Does the organization have a receiving function to handle receipt of all materials and equipment?

2. Are supplies and equipment inspected and counted before acceptance for use?

3. Are quantities and descriptions of supplies and equipment checked by the receiving department against a copy of the purchase order or some other form of notification?

4. Is a logbook or permanent copy of the receiving ticket kept in the receiving department?

ACCOUNTS PAYABLE

1. Is control established over incoming vendor invoices?

2. Are receiving reports matched to the vendor invoices and purchase orders, and are all of these documents kept in accessible files?

3. Are charges for services required to be supported by evidence of performance by individuals other than the ones who incurred the obligations?

4. Are extensions on invoices and applicable freight charges checked by accounts payable personnel?

5. Is the program to be charged entered on the invoice and checked against the purchase order and approved budget?

6. Is there an auditor of disbursements who reviews each voucher to see that proper procedures have been followed?

7. Are checks adequately cross-referenced to vouchers?

8. Are there individuals responsible for accounts payable other than those responsible for cash receipts?

9. Are accrual accounts kept for items which are not invoiced or paid on a regular basis?

10. Are unpaid vouchers totaled and compared with the general ledger on a monthly basis? (If not, indicate when the procedure is done.)

CASH DISBURSEMENTS

The following conditions are indicative of satisfactory controls over cash disbursements.

1. Duties are adequately separated, different persons prepare checks, sign checks, reconcile bank accounts, and have access to cash receipts.

2. All disbursements are properly supported by evidence of receipt and approval of the related goods and services.

3. Blank checks are not signed.

4. Unissued checks are kept in a secure area.

5. Bank accounts are reconciled monthly.

6. Bank accounts and check signers are authorized by the board of directors or trustees.

7. Petty cash vouchers are required for each fund disbursement.

8. The petty cash fund is kept on an imprest basis.

The following material is designed to assist the auditor in reviewing and documenting cash disbursements.

1. Are checks controlled and accounted for with safeguards over unused, returned, and voided checks?

2. Is the drawing of checks to cash or bearer prohibited?

3. Do supporting documents, such as invoices, purchase orders, and receiving reports, accompany checks for the check signers' review?

4. Are vouchers and supporting documents appropriately canceled (stamped or perforated) to prevent duplicate payments?

5. If check-signing plates are used, are they adequately controlled (i.e., maintained by a responsible official who reviews and accounts for prepared checks)?

6. Are two signatures required on all checks or on checks over stated amounts? (Document the procedure followed.)

7. Are check signers responsible officials or employees of the organization? (Obtain a list of authorized signers for the workpapers.)

8. Is the person who prepares the check or initiates the voucher other than the person who mails the check?

9. Are bank accounts reconciled monthly and are differences resolved? (If not, what are the procedures?)

10. Concerning petty cash disbursements:

    a. Is petty cash reimbursed by check and are disbursements reviewed at that time?

APPENDIX I

b. Is there a maximum amount, reasonable in the circumstances, for payments made in cash? (Indicate the amount.)

c. Are petty cash vouchers written in ink to prevent alteration?

d. Are petty cash vouchers canceled upon reimbursement of the fund to prevent their reuse?

PAYROLL

The following conditions are indicative of satisfactory controls over payroll.

1. Written authorizations are on file for all employees, covering rates of pay, withholdings, and deductions.

2. The organization has written personnel policies covering job descriptions, hiring procedures, promotions, and dismissals.

3. Distribution of payroll charges is based on documentation prepared outside the payroll department.

4. Payroll charges are reviewed against program budgets, and deviations are reported to management for follow-up action.

5. Adequate timekeeping procedures, including the use of timeclocks or attendance sheets and supervisory review and approval, are employed for controlling paid time.

6. Payroll checks are prepared and distributed by individuals independent of each other.

7. Other key payroll and personnel duties, such as timekeeping, salary authorization, and personnel administration, are adequately separated.

The material which follows is designed to assist the auditor in reviewing and documenting the payroll function.

1. Are personnel policies in writing?

2. Are payroll and personnel policies governing compensation in accordance with the requirements of grant agreements?

APPENDIX I

3. Are there procedures to control time and attendance reporting?

a. Are timecards or attendance sheets used? (Indicate the method.)

b. Is supervisory approval of time and attendance reports required?

4. Are there procedures to insure that employees are paid in accordance with approved wage and salary rates?

5. Is the distribution of payroll charges checked by a second person and are aggregate amounts compared to the approved budget?

6. Are authorizations on file covering rates of pay, withholdings, and deductions?

7. Are wages paid at or above the Federal minimum wage?

8. Are procedures adequate for controlling (a) overtime wages, (b) overtime work authorization, and (c) supervisory approval of overtime?

9. Are payroll checks distributed by persons not responsible for preparing the checks?

PROPERTY AND EQUIPMENT

The following conditions are indicative of satisfactory control over property and equipment.

1. There is an effective system of authorization and approval of capital equipment expenditures.

2. Accounting practices for recording capital assets are reduced to writing.

3. Detailed records of individual capital assets are kept and periodically balanced with the general ledger accounts.

4. There are effective procedures for authorizing and accounting for disposals.

5. Property and equipment is stored in a secure place.

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The following questions are designed to assist the auditor in reviewing and documenting the system of control over property and equipment.

1. Are executive authorizations and approvals required for originating expenditures for capital items?

2. Are expenditures for capital items reviewed for grantor approval before funds are committed?

3. Are supplemental authorizations, including those of the grantor agency, required for expenditures in excess of originally approved amounts?

4. Does the organization have established policies covering capitalization and depreciation? (Describe policies.)

5. Does the organization charge depreciation or use allowances on property and equipment against any grant programs which it administers?

6. Is historical cost the basis for computing depreciation or use allowances?

7. Are the organization's depreciation policies or methods of computing use allowances in accord with the standards outlined in Federal circulars or agency regulations?

8. Are there detailed records showing the asset values of individual units of property and equipment?

9. Are detailed property records periodically balanced to the general ledger?

10. Are detailed property records periodically checked by physical inventory?

11. Are differences between book records and physical counts reconciled and are the records adjusted to reflect shortages?

12. Are there procedures governing the disposition of property and equipment? (Describe procedures.)

13. Is the estimated salvage value noted on the authorization order relative to disposition of property and equipment?

14. Are periodic reports submitted showing obsolete equipment, equipment needing repair, or equipment no longer useful to the organization? (Describe reports.)

INDIRECT COSTS

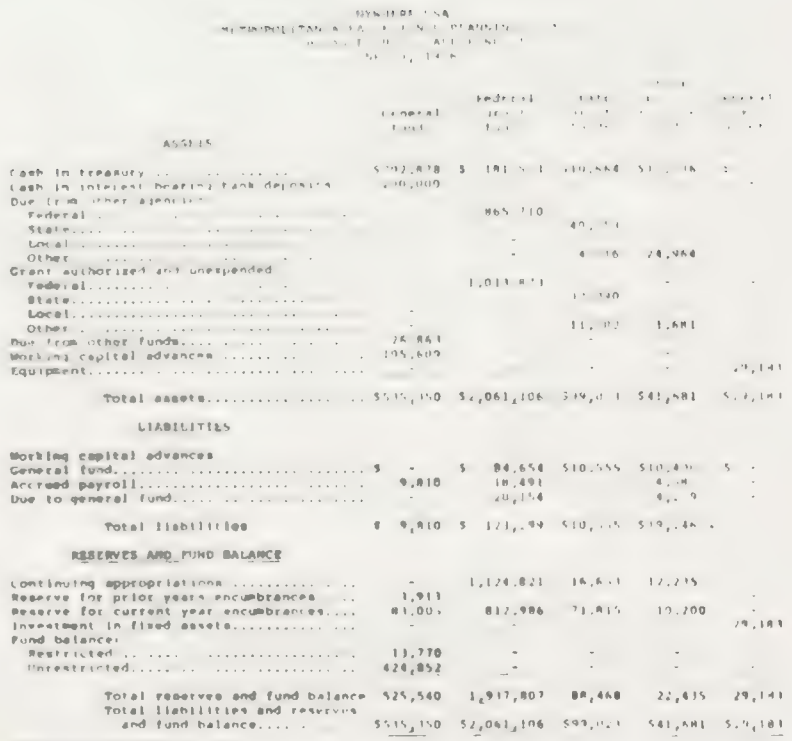
1. Does the organization have an indirect cost allocation plan or a negotiated indirect cost rate? (Paragraph F, Attachment A, Circular 74-4.)

2. Is the plan prepared in accordance with the provisions of OMB Circular 74-4?

3. Has audit cognizance for the plan been established and are the rates accepted by all participating Federal and State agencies?

4. Does the organization have procedures which provide assurance that consistent treatment is applied in the distribution of charges as direct or indirect costs to all grants?

APPENDIX II



1/Statements prepared in accord with "Governmental Accounting and Financial Reporting Principles" developed by the National Council on Governmental Accounting may be substituted for these statements, if they provide similar information.

ANYWHERE USA
METROPOLITAN REGIONAL PLANNING COUNCIL
GENERAL FUND BALANCE SHEET
JUNE 30, 1976

ASSETS

Cash in treasury	$202,878
Cash in interest bearing bank deposits	200,000
Due from other funds	26,863
Working capital advances	105,609
Total assets	$535,350

LIABILITIES

Accrued payroll	9,810

RESERVES AND FUND BALANCE

Reserve for prior years encumbrances (sch. 1-A)	3,913
Reserve for current year encumbrances (sch. 1-C)	83,005
Fund balance (sch. 1-A):	
Restricted	13,770
Unrestricted	424,852
Total reserves and fund balance	525,540
Total liabilites and reserves and fund balance	$535,350

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ANYWHERE USA
METROPOLITAN AREA REGIONAL PLANNING COUNCIL
GENERAL FUND
ANALYSIS OF CHANGES IN FUND BALANCE
YEAR ENDED JUNE 30, 1976

Fund balance at July 1, 1975		$357,316
Appropriations (sch. 1-C)	$1,016,053	
Less: Estimated revenue (sch. 1-B)	991,551	
Appropriated from fund balance		24,502
Fund balance unappropriated		332,814
Add:		
Fund balance adjustments applicable to Prior years:		
Prior years reserves:	86,994	
Less: Expenditure $80,175; Prior years encumbrances (sch. 1) 3,913	-84,088	
Prior years encumbrances cancelled		2,906
Current year net addition to fund balance:		
Revenue over budget estimate (sch. 1-B)	50,163	
Appropriations over expenditures (sch. 1-C)	52,739	
Net addition		102,902
Fund balance		438,622
Less restricted for equipment purchase		13,770
FUND BALANCE AT JUNE 30, 1976 (Schedule 1)		$424,852

ANYWHERE USA
METROPOLITAN AREA REGIONAL PLANNING COUNCIL
GENERAL FUND
STATEMENT OF REVENUE
YEAR ENDED JUNE 30, 1976

	Budget estimate	Revenue	Revenue over or (under) estimate
Local government assessments	$393,474	$394,747	$ -
Interest:			
Interest on bank deposits	-	41,620	41,620
Interest on investments	-	2,738	2,738
Other interest and dividends	-	2,178	2,178
TOTAL INTEREST	-	46,536	46,536
Reimbursements from other funds	-	8,676	8,676
Services to other funds	597,077	555,674	(41,403)
Transfer of prior year local contributions from grant programs	-	28,357	28,357
Transfer of State subvention from grant programs	-	5,215	5,215
Unallocated State subvention	-	1,975	1,975
Other revenue	-	807	807
Total general fund revenue (sch. 1-A)	$991,551	$1,041,714	$50,163

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APPENDIX II

ANYWHERE USA
METROPOLITAN AREA REGIONAL PLANNING COUNCIL
GENERAL FUND
STATEMENT OF APPROPRIATIONS, EXPENDITURES AND ENCUMBRANCES
YEAR ENDED JUNE 30, 1976

	Appropriations	Expenditures	Encumbrances	Unencumbered balance
ADMINISTRATION & GENERAL EXPENSE:				
Salaries and wages	$ 187,155	$169,564	$ -	$17,591
Fringe benefits	19,324	16,921	915	1,488
Office space rental	123,000	119,761	-	3,239
Office equipment rental	37,184	33,141	-	4,043
Legal fees	10,000	3,208	3,491	3,301
Other contractual services	30,000	18,505	10,390	1,105
Office supplies	28,750	22,493	1,000	5,257
Telephone	18,000	17,637	-	363
Postage	13,780	10,123	-	3,657
Travel	18,883	18,911	1,120	(1,148)
Transportation allowance	9,221	6,396	450	2,375
Special departmental expense	10,000	9,434	704	(138)
Rental of automotive	7,324	4,705	350	2,269
Photocopy equipment rental	25,800	22,124	945	2,731
Memberships	5,025	5,045	-	(20)
Fidelity and general insurance	2,026	2,887	-	(861)
Report printing	2,400	2,909	300	(809)
Miscellaneous	9,040	9,318	880	(1,158)
Total administration & general expense	556,912	493,082	20,545	43,285
Equipment outlay	7,617	7,379	714	(476)
Board expense	25,000	19,748	-	5,252
Unallocated reserve	51,400	47,400	625	3,375
Subtotals	640,929	567,609	21,884	51,436
Accrued fringe benefits for grant programs	-	(57,905)	57,905	-
Local contribution to grant programs	375,124	370,605	3,216	1,303
Total general fund (sch. 1-A)	$1,016,053	$880,309	83,005	$52,739

APPENDIX II
Schedule 1-C

ANTWERPEN OBA
METROPOLITAN AREA REGIONAL PLANNING COUNCIL
FEDERAL GRANT FUNDS
BALANCE SHEET
JUNE 30, 1976

		Department of Housing and Urban Development		Department of Transportation					Environmental Protection Agency
				UMTA		FAA	FHWA		
	Total	Grant No. 1 1974-75 Urban Planning Assistance Fund	Grant No. 2 1975-76 Urban Planning Assistance Fund	Grant No. 3 1974-75 Urban Mass Technical Study Fund	Grant No. 4 1975-76 Urban Mass Technical Study Fund	Grant No. 5 S.D. Plan for Air Transportation Fund	Grant No. 6 1974-75 Transportation Planning 1/2% Fund	Grant No. 7 1974-75 Transportation Planning 1/2% Fund	Grant No. 8 Area Waste Treatment Planning Program Fund
Assets									
Cash (Sch. 2-A)	$ 181,523	$ 6,580	$ -	$ 55,316	$ -	$ 36,247	$ 29,276	$ 22,935	$ 31,169
Due from other agencies:									
Federal	865,710	-	48,815	-	150,767	45,197	23,420	7,177	590,334
Local	-	-	-	-	-	-	-	-	-
Grants authorized and unexpended:									
Federal	1,013,873	-	25,497	99,425	144,151	-	-	129,782	615,018
Local	-	-	-	-	-	-	-	-	-
Total assets	2,061,106	6,580	74,312	154,741	294,918	81,444	52,696	159,894	1,236,521
Liabilities									
Working capital advances--general fund (Sch. 2-A)	84,654	-	20,705	-	63,949	-	-	-	-
Accrued payroll (Sch. 2-A)	18,491	-	3,208	-	11,536	-	-	1,464	2,283
Due to general fund (Sch. 2-A)	20,154	-	3,496	-	12,574	-	-	1,595	2,489
Total liabilities	123,299	-	27,409	-	88,059	-	-	3,059	4,772
Reserves									
Continuing appropriation	1,124,821	644	38,246	124,249	180,189	11,000	-	155,456	615,018
Reserve for encumbrances	812,986	5,916	8,657	30,492	26,670	70,444	52,696	1,380	616,731
Total reserves	1,937,807	6,580	46,903	154,741	206,859	81,444	52,696	156,835	1,231,749
Total liabilities and reserves	$2,061,106	$ 6,580	$74,312	$154,741	$294,918	$81,444	$52,696	$159,894	$1,236,521

APPENDIX II
Schedule 2

APPENDIX II

APPENDIX II
Schedule 2-A

ANYWHERE USA
METROPOLITAN AREA REGIONAL PLANNING COUNCIL
FEDERAL GRANT FUNDS
STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS
YEAR ENDED JUNE 30, 1976

	Total	Department of Housing & Urban Development		Department of Transportation					Environmental Protection Agency
				UMTA		FAA	FHWA		
		Grant No.1 1974-75 Urban Planning Assistance Fund	Grant No.2 1975-76 Urban Planning Assistance Fund	Grant No.3 1974-75 Urban Mass Technical Study Fund	Grant No.4 1975-76 Urban Mass Technical Study Fund	Grant No.5 S.D.Plan For Air Transportation Fund	Grant No.6 1974-75 Transportation Planning 1/2% Fund	Grant No.7 1975-76 Transportation Planning 1/2% Fund	Grant No.8 Area Waste Treatment Planning Program Fund
Cash available July 1, 1975--$	31,469	$ -	$ -	$ -	$ -	$31,469	$ -	$ -	$ -
Cash receipts:									
Federal grant contributions-	1,331,675	86,643	165,688	300,525	405,082	-	108,268	131,541	133,928
State subvention	118,388	-	25,966	-	59,100	-	-	33,322	-
Local contributions:									
Prior years assessments----	40,000	-	-	-	-	40,000	-	-	-
Current year assessment----	243,737	-	94,034	-	115,900	-	-	33,803	-
In-kind contribution-------	-	-	-	-	-	-	-	-	-
Working capital advances-general fund (Sch. 2)------	84,654	-	20,705	-	63,949	-	-	-	-
Total available	$1,849,923	$86,643	$306,393	$300,525	$644,031	$71,469	$108,268	$198,666	$133,928
Cash disbursements:									
Direct costs-----------	$1,127,230	$54,729	$200,363	$143,192	$435,423	35,222	$62,465	$118,988	$ 76,868
Indirect costs----------	679,322	14,460	112,734	17,806	232,718	-	11,139	59,802	30,663
Total project disbursements----------	1,806,552	69,189	313,097	160,998	668,141	35,222	73,584	178,790	107,531
Accrued payroll--June 30, 1975----------	11,005	955	-	8,896	-	-	1,154	-	-
Accrued payroll--June 30, 1976 (Sch. 2)----------	(18,491)	-	(3,208)	-	(11,536)	-	-	(1,464)	(2,283)
Due to general fund (Sch 2)----------	(20,154)	-	(3,496)	-	(12,574)	-	-	(1,595)	(2,489)
Net project disbursements----------	1,578,912	70,144	306,393	169,894	644,031	35,222	74,738	175,731	102,759
Working capital advance reimbursements----------	89,488	9,919	-	75,315	-	-	4,254	-	-
Total disbursements------	1,668,400	80,063	306,393	245,209	644,031	35,222	78,992	175,731	102,759
Cash available June 30, 1976 (Sch. 2)----------	$ 181,523	$ 6,580	$ -	$ 55,316	$ -	$36,247	$29,276	$ 22,935	$ 31,169

ANYWHERE USA
METROPOLITAN AREA REGIONAL PLANNING COUNCIL
STATE GRANT FUNDS
BALANCE SHEET
JUNE 30, 1976

		Office of Planning and Research			Department of Transportation		
	Total	Grant No.9 1974-75 Technical Assistance Interagency Coordination Fund	Grant No. 10 Airport Noise Study Fund	Grant No. 11 University Work Study Fund	Grant No. 12 1974-75 Transit Implementation Program Fund	Grant No. 13 Air Transportation and Airport Study Fund	Grant No. 14 Regional Carpool Program Fund
ASSETS							
Cash in Treasury (sch. 3-A)	$10,664	$ -	$ 4,232	$ -	$ -	$6,432	$ -
Due from other agencies:							
State	40,253	-	-	27,085	-	-	13,168
Other	4,516	-	-	4,516	-	-	-
Grants authorized and unexpended:							
State	32,090	-	27,934	-	-	-	4,156
Other	11,500	-	11,500	-	-	-	-
Total assets	$99,023	$ -	$43,666	$31,601	$ -	$6,432	$17,324
LIABILITIES							
Working capital advances--general fund (sch. 3-A)	$10,555	$ -	$ -	$ 3,153	$ -	$ -	$ 7,402
Total liabilities	$10,555	$ -	$ -	$ 3,153	$ -	$ -	$ 7,402
RESERVES							
Continuing appropriation	$16,653	$ -	$11,500	$ -	$ -	$ 481	$ 4,672
Reserve for encumbrances	71,815	-	32,166	28,448	-	5,951	5,250
Total reserves	$88,468	$ -	$43,666	$28,448	$ -	$6,432	$ 9,922
Total liabilities and reserves	$99,023	$ -	$43,666	$31,601	$ -	$6,432	$17,324

APPENDIX II

APPENDIX II
Schedule 3-A

ANYWHERE USA
METROPOLITAN AREA REGIONAL PLANNING COUNCIL
STATE GRANT FUNDS
STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS
YEAR ENDED JUNE 30, 1976

		Office of Planning and Research			Department of Transportation		
	Total	Grant No. 9 1974-75 Technical Assistance Interagency Coordination Fund	Grant No. 10 Airport Noise Study Fund	Grant No. 11 University Work Study Fund	Grant No. 12 1974-75 Transit Implementation Program Fund	Grant No. 13 Air Transportation and Airport Study Fund	Grant No. 14 Regional Carpool Program Fund
Cash available July 1, 1975	$ 16,216	$ 7,085	$ -	$ -	$ -	$9,131	$ -
Cash receipts:							
State grant contributions	107,439	4,688	5,066	12,915	58,619	-	26,151
State subvention	-	-	-	-	-	-	-
Federal grant	10,288	-	-	-	10,288	-	-
In-kind contributions--other agencies	15,484		-	15,484	-	-	-
Local contributions	10,625		5,000	-	-	-	5,625
Working capital advances--general fund (sch. 3)	10,555	-	-	3,153	-	-	7,402
Total available	170,607	11,773	10,066	31,552	68,907	9,131	39,178
Cash disbursements:							
Project disbursements:							
Direct costs	79,482	520	5,834	31,552	2,832	2,066	36,678
Indirect costs	4,319	-	-	-	1,186	633	2,500
Total project disbursements	83,801	520	5,834	31,552	4,018	2,699	39,178
Accrued payroll: June 30, 1975	443	65	-	-	378	-	-
Net project disbursements	84,244	585	5,834	31,552	4,396	2,699	39,178
Transfers to general fund	11,188	11,188	-	-	-	-	-
Returned to grantor	-	-	-	-	-	-	-
Working capital advance reimbursement	64,511	-	-	-	64,511	-	-
Total disbursements	159,943	11,773	5,834	31,552	68,907	2,699	39,178
Cash available June 30, 1976 (sch. 3)	$ 10,664	$ -	$4,232	$ -	$ -	$6,432	$ -

ANTWERP USA
METROPOLITAN AREA REGIONAL PLANNING COUNCIL
OTHER SPECIAL REVENUE FUNDS
BALANCE SHEET
JUNE 30, 1976

	Total	Grant No. 15 Local Transportation Administration Fund	Grant No. 16 Transit Implementation Program Fund	Grant No. 17 Open Space Plan Fund	Grant No. 18 Environmental Impact Study Fund	Grant No. 19 Comprehensive Planning Fund	Grant No. 20 Member Assessment Special Study Fund
ASSETS							
Cash in Treasury (sch. 4-A)	$15,036	$ -	$10,555	$ -	$ -	$ -	$4,481
Due from other agencies--other	24,964	19,792	-	-	-	5,172	-
Grants authorized and unexpended--other	1,681	-	-	-	-	1,681	-
Total assets	$41,681	$19,792	$10,555	$ -	$ -	$6,853	$4,481
LIABILITIES							
Working capital advances--general fund (sch. 4-A)	$10,400	$ 5,572	$ -	$ -	$ -	$4,828	$ -
Accrued payroll (sch. 4-A)	4,587	1,923	-	-	-	345	2,319
Due to general fund (sch. 4-A)	4,259	2,097	-	-	-	-	2,162
Total liabilities	$19,246	$ 9,592	$ -	$ -	$ -	$5,173	$4,481
RESERVES							
Continuing appropriation	12,235	-	10,555	-	-	1,680	-
Reserve for encumbrances	10,200	10,200	-	-	-	-	-
Total reserves	22,435	10,200	10,555	-	-	1,680	-
Total liabilities and reserves	$41,681	$19,792	$10,555	$ -	$ -	$6,853	$4,481

APPENDIX II

APPENDIX II
Schedule 4-A

ANYWHERE USA
METROPOLITIAN AREA REGIONAL PLANNING COUNCIL
OTHER SPECIAL REVENUE FUNDS
STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS
YEAR ENDED JUNE 30, 1976

	Total	Grant No. 15 Local Transportation Administration Fund	Grant No. 16 Transit Implementation Program Fund	Grant No. 17 Open Space Plan Fund	Grant No. 18 Environmental Impact Study Fund	Grant No. 19 Comprehensive Planning Fund	Grant No. 20 Member Assessment Special Study Fund
Cash available July 1, 1975	$ 34,348	$ -	$ 14,496	$ 9,684	$ 10,168	$ -	$ -
Cash receipts:							
Contributions from other agencies	142,829	75,302	-	-	-	38,557	28,970
Local contributions	-	-	-	-	-	-	-
Working capital advances--general fund (sch. 4)	10,400	5,572	-	-	-	4,828	-
State subvention	276	-	-	-	-	-	276
Total available	187,853	80,874	14,496	9,684	10,168	43,385	29,246
Cash disbursements:							
Direct costs	118,863	58,613	3,241	3,434	437	34,574	18,564
Indirect costs	29,987	18,469	556	-	280	-	10,682
Total project disbursements	148,850	77,082	3,797	3,434	717	34,574	29,246
Accrued payroll--June 30, 1975	1,431	315	144	-	-	972	-
Accrued payroll--June 30, 1976 (sch. 4)	(4,587)	(1,923)	-	-	-	(345)	(2,319)
Due to general fund (sch. 4)	(4,259)	(2,097)	-	-	-	-	(2,162)
Net project disbursements:	141,435	73,377	3,941	3,434	717	35,201	24,765
Transfers to general fund	15,701	-	-	6,250	9,451	-	-
Working capital advance reimbursements	15,681	7,497	-	-	-	8,184	-
Total disbursements	172,817	80,874	3,941	9,684	10,168	43,385	24,765
CASH AVAILABLE JUNE 30, 1976 (sch. 4)	$ 15,036	$ -	$ 10,555	$ -	$ -	$ -	$ 4,481

APPENDIX II

APPENDIX II
Schedule 5

ANYWHERE USA
METROPOLITAN AREA REGIONAL PLANNING COUNCIL
STATEMENT OF QUESTIONED COSTS
FISCAL YEAR ENDED JUNE 30, 1976

	Grant number and name	Questioned costs
1.	Urban Planning Assistance	$ 843
2.	Urban Planning Assistance	5,545
3.	Urban Mass Tech. Study	1.038
4.	Urban Mass Tech. Study	11,740
6.	Transportation Planning	649
7.	Transportation Planning	1,337
8.	Area Waste Treatment Planning	1,787
12.	Transit Implementation Program	414
13.	Air Transportation & Airport Study	636
14.	Regional Carpool Program	145
15.	Local Transportation Administration	1,077
16.	Transit Implementation Program	933
18.	Environmental Impact Study	816
20.	Member Assessment Special Study	694
		$27,654

Note: The report should contain an explanation of the questioned costs.

APPENDIX III

APPENDIX III

OFFICE OF MANAGEMENT AND BUDGET

Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments"

AGENCY: Office of Management and Budget

ACTION: Final Policy

SUMMARY: This notice revises OMB Circular A-102 by replacing paragraph 2h, Attachment C, with a new Attachment P entitled "Audit Requirements." The revision originated from a Presidential initiative to streamline Federal aid, and is another part of OMB's system of guidance for federally assisted programs.

One area the President highlighted as having a substantial need for improvement was audit of federally assisted programs. He directed Federal departments and agencies to improve audit coordination, and to increase their reliance on audits made by State or local governments. This revision sets forth the audit requirements for State and local governments and Indian tribal governments receiving Federal assistance. It provides for independent audits of financial operations including compliance with certain provisions of Federal law and regulation. The requirements are established to insure that audits are made on an organization-wide basis rather than a grant-by-grant basis.

EFFECTIVE DATE: This revision becomes effective October 22, 1979.

FOR FURTHER INFORMATION CONTACT: John J. Lordan, Chief, Financial Management Branch, Office of Management of Budget, Washington, D.C. 20503, (202) 395-6823.

SUPPLEMENTARY INFORMATION: On July 11, 1979, a notice was published in the Federal Register (44 FR 40824-25) to amend Circular A-102. Interested persons were invited to submit written comments by September 11, 1979. About fifty comments were received from Federal agencies, State and local governments, professional associations and others. The comments were considered in developing these final regulations. Although almost all commenters agreed with the concept of a single audit, some raised questions or made suggestions for clarifying changes. The more significant comments received, and OMB's responses to them, are discussed below.

Changes in Final Regulation

Set forth below are changes that have been adopted in the final regulations. The paragraphs are keyed to the proposed regulations published on July 11, 1979.

1. Paragraph 1 has been amended to make the Attachment applicable to Indian tribal governments. This paragraph was also changed to make it clear that one of the objectives of the audit was to determine if financial reports to the Federal Government contain accurate and reliable data.

2. Paragraph 2. The definition of "cognizant agency" was added to this paragraph, and is now used uniformly throughout the Attachment.

3. Paragraph 3 was amended to provide that contracts awarded by recipients for audit services shall include a reference to this Attachment. Also, the paragraph was further divided into two separate paragraphs for clarity.

4. Paragraph 5. A clause was added to make it clear that the auditor should make a determination that the financial statements are presented fairly and in accordance with generally accepted accounting principles.

5. Paragraph 7. The phrase "at scheduled intervals" was deleted for clarity.

6. Paragraph 8 was changed to make it clear that, in the event irregularities are found, management officials above the level of involvement should be notified.

7. Paragraph 9 was restructured and reworded to clarify its intent. Also, a change was made to make it clear that auditors need express a positive assurance only with respect to items tested.

8. Paragraph 10 was amended to require cognizant agencies to notify auditors in writing when the three-year retention period for workpapers needs to be extended.

9. Paragraph 13. A sentence was added to make it clear that auditors are responsible for distributing audit reports to their program officials.

10. Paragraph 14. Changes were made to make it clear that this paragraph covered only State and local governments and Indian tribal governments. Also, the recipient's responsibilities with respect to subrecipient audits are more clearly delineated.

Suggested Changes Not Considered Necessary

Comment. Several commenters felt that there were conflicts between Attachment P and audit guidelines issued by the General Accounting Office.

Response. The GAO guidelines are currently being reviewed to assure consistence of policy.

Comment. Several commenters were concerned with the provisions of the Attachment requiring comments on the accuracy of financial reports. This requirement, they said, would require the examination of every transaction processed by a governmental entity.

Response. It was never intended that a hundred per cent examination would be routinely required. We believe this is clear from other provisions of the Attachment.

Comment. One commenter said it was not clear whether an auditor should automatically expand the scope of audit and secure additional data to support the disclosure of irregularities in the audit report.

Response. The Attachment does not provide for automatically expanding the scope of audit work. This is a matter that would have to be worked out between the auditor, the cognizant agency, and the recipient.

Comment. Several commenters recommended that the Attachment contain a definition of the term "independent."

Response. The Attachment incorporates by reference the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions* published by the General Accounting Office. Chapter 3 of these standards discusses the standard of independence in some detail.

Comment. Several commenters said that additional audit costs would be incurred to achieve full compliance with the Circular. They suggested that the mechanism for funding these audits be addressed in the Attachment.

Response. Circular 74-4, "Cost principles for grants to State and local governments," establishes rules for determining allowable costs. This Circular provides that the cost of audits is allowable.

Comment. One commenter suggested that each grant application should contain a certification that arrangements will be made for the audits prescribed by the Circular. Failure to furnish an acceptable audit as determined by the cognizant agency could be a basis for denial of Federal funds.

Response. The grant application forms prescribed by Circular A-102 now contain an assurance that the applicant will comply with all the provisions of the Circular. We do not believe it is necessary to single out the audit requirements for a separate certification.

Comment. One commenter said the Attachment requires an audit every two years, and asked whether that meant

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that only every other year's transactions should be audited.

Response. It is the intent of the Circular that audits cover the period since the previous audit. If this is a two-year period, the audit should cover both years.

James T. McIntyre, Jr.,
Director.

Circular A-102

Attachment P—Audit Requirements

1. This Attachment establishes audit requirements for State and local governments and Indian tribal governments that receive Federal assistance. It provides for independent audits of financial operations, including compliance with certain provisions of Federal law and regulation. The requirements are established to insure that audits are made on an organization-wide basis, rather than on a grant-by-grant basis. Such audits are to determine whether (a) financial operations are conducted properly, (b) the financial statements are presented fairly, (c) the organization has complied with laws and regulations affecting the expenditure of Federal funds, (d) internal procedures have been established to meet the objectives of federally assisted programs, and (e) financial reports to the Federal Government contain accurate and reliable information. Except where specifically required by law, no additional requirements for audit will be imposed unless approved by the Office of Management and Budget.

2. Definitions. "Cognizant agency" means the Federal agency that is assigned audit responsibility for a particular recipient organization by the Office of Management and Budget.

"Recipient organization" means a State department, a local government, an Indian tribal government, or a subdivision of such entities, that receives Federal assistance. It does not include State and local institutions of higher education or hospitals, which are covered by Circular A-110.

3. State and local governments and Indian tribal governments shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth below. Where contracts are awarded for audit services, the contracts shall include a reference to this Attachment.

4. The provisions of this Attachment do not limit the authority of Federal agencies to make audits of recipient organizations. However, if independent audits arranged for by recipients meet the requirements prescribed below, all Federal agencies shall rely on them, and any additional audit work shall build upon the work already done.

5. Audits shall be made in accordance with the General Accounting Office *Standards for Audit of Governmental Organizations, Programs, Activities & Functions*, the *Guidelines for Financial and Compliance Audits of Federally Assisted Programs*, any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

6. Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations.

These examinations are to determine whether:

a. There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities.

b. The financial statements are presented fairly in accordance with generally accepted accounting principles.

c. The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data; and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of this Circular.

d. Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

7. In order to accomplish the purposes set forth above, a representative number of charges to Federal awards shall be tested. The test shall be representative of (1) the universe of Federal awards received, and (2) all cost categories that materially affect the award. The test is to determine whether the charges:

a. Are necessary and reasonable for the proper administration of the program.

b. Conform to any limitations or exclusions in the award.

c. Were given consistent accounting treatment and applied uniformly to both federally assisted and other activities of the recipient.

d. Were net of applicable credits.

e. Did not include costs properly chargeable to other federally assisted programs.

f. Were properly recorded (i.e., correct amount, date) and supported by source documentation.

g. Were approved in advance if subject to prior approval in accordance with Circular 74-4.

h. Were incurred in accordance with competitive purchasing procedures if covered by Attachment O of this Circular.

i. Were allocated equitably to benefiting activities, including non-Federal activities.

8. Audits usually will be made annually, but not less frequently than every two years.

9. If the auditor becomes aware of irregularities in the recipient organization, the auditor shall promptly notify the cognizant agency and recipient management officials above the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

10. The audit report shall include:

a. Financial statements, including footnotes, of the recipient organization.

b. The auditors' comments on the financial statements which should:

(1) Identify the statements examined, and the period covered.

(2) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.

(3) State that the audit was done in accordance with the standards in paragraph 5.

(4) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

c. The auditors' comments on compliance and internal control which should:

(1) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(2) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports.

(3) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

d. Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies.

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e. Comments on corrective action taken or planned by the recipient.

11. Work papers and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

12. The Office of Management and Budget will work with Federal agencies and State and local governments to assure that recipient audits are made in accordance with the standards set forth in paragraph 5.

13. The Office of Management and Budget will designate cognizant agencies for major recipient organizations.

14. The cognizant agency shall have the following responsibilities:

a. Obtain or make quality assessment reviews of the work of non-Federal audit organizations and provide the results to other interested audit agencies. (If a non-Federal audit organization is responsible for audits of recipients that have different cognizant audit agencies, a single quality assessment review should be arranged.)

b. Assure that all audit reports of recipients that affect federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

c. Whenever significant inadequacies in an audit are disclosed, the recipient organization will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient organization and Federal awarding agencies of the facts and its recommendation. Major inadequacies or continuing substandard performance of independent auditors shall be referred to appropriate professional bodies.

d. Assure that satisfactory audit coverage is provided in a timely manner and that audits adhere to the provisions of this attachment.

e. Provide technical advice and act as a liaison between Federal agencies, independent auditors, and recipient organizations.

f. Maintain a follow-up system on audit findings and investigative matters to assure that audit findings are resolved.

g. Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.

15. Recipients shall require subrecipients that are State and local governments or Indian tribal governments to adopt the requirements in paragraph 1 through 11 above. The recipient shall ensure that the subrecipient audit reports are received as required, and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for these reports described in paragraph 14.

[FR Doc. 79-32543 Filed 10-19-79; 8:45 am]

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APPENDIX IV

APPENDIX IV

OFFICE OF MANAGEMENT AND BUDGET CIRCULARS

Circular A-102, "Uniform administrative requirements for grants-in-aid to State and local governments"

Circular A-110, "Grants and agreements with institutions of higher education, hospitals and other non-profit organizations"

Circular 74-4, "Cost principles applicable to grants and contracts with State and local governments"

Circular A-21, "Cost principles for educational institutions"

[FR Doc. 80-9901 Filed 4-1-80; 8:45 am]
BILLING CODE 3110-01-C

Relocation Assistance to Displaced Businesses, Farm Operations and Nonprofit Organizations



Introduction

You have just received a "Notice of Displacement" from a public agency carrying out a public project with financial help from the Department of Housing and Urban Development (HUD). Sometime in the future it will be necessary that you move so that the public project may proceed

A "Notice of Displacement" is **not** a notice to move. It is important that you do not move before all of your rights are explained to you by the public agency and you understand what you must do to receive the relocation payments and other assistance to which you are entitled

To help you move, you will be provided with relocation payments and other relocation assistance. This assistance is described in HUD regulations that implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (called the "Uniform Act"). This brochure describes the most important features of these regulations and your rights under these rules.

This brochure may not answer all your questions. If you have more questions about your relocation, contact the public agency carrying out the project or the HUD Area Office serving your community. Ask your questions before you move. Afterwards, it may be too late.

The name of the person to contact at the public agency is indicated in the front of the brochure. The HUD Area Office serving your community is identified in the back of the brochure.



Summary of Relocation Assistance

Payment for Moving Expenses

You will receive either a moving expense payment to cover the actual necessary and reasonable cost of your move or a fixed payment in lieu of a payment for actual moving expenses

Other Rights and Assistance

Information about the availability of suitable replacement locations will be provided to you by the public agency on a continuing basis.

Other help to reestablish your business and to minimize the impact of the move will be provided.

You will receive help from the public agency in filling out any claim form needed to obtain a relocation payment.

You may appeal the public agency decision as to your right to a relocation payment or the amount of the payment. The initial appeal must be filed with the public agency

Questions and Answers

How Will The Public Agency Know What Relocation Help I Need?

You will be contacted and personally interviewed by a representative of the public agency to determine your relocation needs for a replacement location and other services. You will be asked about such matters as your space requirements and location preferences. It is to your advantage to provide the information so that the public agency can assist you in moving with a minimum of hardship. The information that you give will be kept in confidence by the public agency



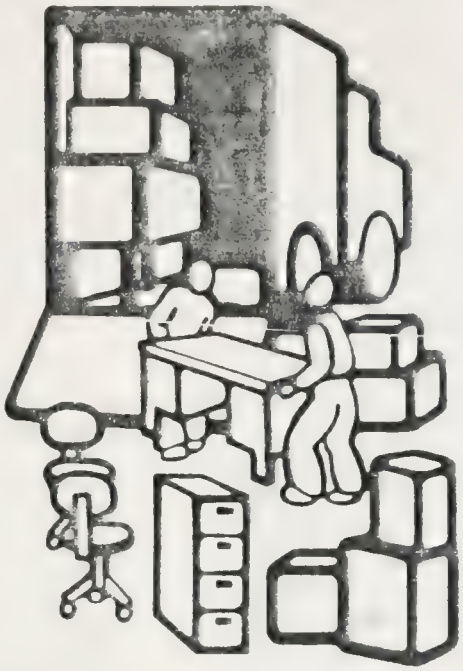
How Soon Will I Have To Move?

Every effort will be made to provide you with sufficient time to locate a suitable replacement location to reestablish your business. However, it is important that you keep in close contact with the public agency so that you are aware of the time schedule for carrying out the project and the approximate date by which you will have to move. Often, it is possible to work out with the public agency a mutually agreeable date for the move.

You will be given enough time to make plans for moving. Unless there is an urgent need for your property, such as a health or safety emergency, you will not be required to move without at least 90 days advance written notice

I Own The Property. Will I Have To Move Before Being Paid For My Property?

If you reach a voluntary agreement to sell your property, you cannot be required to move before you receive the agreed purchase price. If the property is acquired through an eminent domain proceeding, you cannot be required to move before the estimated fair market value of the property has been deposited with the court. In most States, you will be able to withdraw this amount immediately, less any amounts necessary to pay off any mortgage or other liens on the property and to resolve any special ownership problems. Your early withdrawal of your share of the money will not affect your right to seek additional compensation for your property.



Will I Have To Pay Rent To The Public Agency Before I Move?

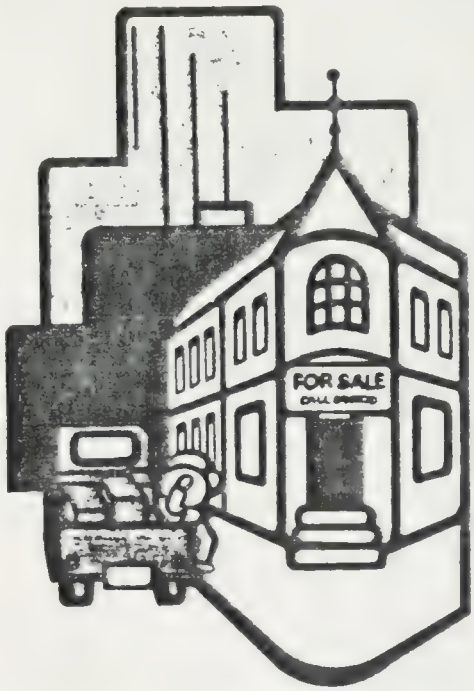
You may be required to pay a fair rent to the public agency for the period between the acquisition of the property and the date that you move.

How Will I Find A Replacement Location?

The public agency will provide you with current and continuing information on available replacement locations that meet your needs. The public agency may also provide you with the names of real estate agents and brokers who may assist you in finding the type of replacement location needed for your reestablishment.

While the public agency will assist you in obtaining a suitable replacement location, you should take an active role in finding and relocating to a location of your choice. No one knows your needs better than you. You will want a facility that provides sufficient space for your planned activities. You will also want to assure that there are no zoning or other requirements which will unduly restrict your planned operations.

Also, ask the public agency to explain which kinds of moving costs are eligible for repayment and which are not eligible. That will enable you to carry out your move in the most advantageous manner.



What Other Assistance Will Be Available to Help Me?

In addition to help in finding a suitable replacement location, other assistance, when necessary, will be provided by the public agency. This includes information on Federal, State, and local programs that may be of help in reestablishing a business. For example, the Small Business Administration (SBA) provides managerial and technical assistance to some businesses. Also, SBA administers a loan program which may be of help in reestablishing a displaced business. The public agency will assist you in applying for help available from government agencies

The range of services will vary according to the needs of the business being displaced. You should ask the public agency representative to tell you about the specific services that will be available to help you



I Have Found A Replacement Location and Want to Move. What Should I Do?

Before you make any arrangements to move, notify the public agency, in writing, of your intention to move. This should be done at least 30 days prior to the date you begin your move. The public agency will discuss the move with you and advise you of the specific relocation payment(s) for which you may be eligible, the requirements to be met, and how to obtain your payment.

I Plan To Discontinue My Business Rather Than Move. What Should I Do?

If you have decided to discontinue your business rather than reestablish, you may still be eligible to receive a payment. Contact the public agency and discuss your decision to discontinue your business. You will be informed of the relocation payment(s) for which you may be eligible, the requirements to be met, and how to obtain your payment

What Kind Of Relocation Payments Are Available?

Every displaced person is entitled to receive a relocation payment to cover the necessary and reasonable cost of moving. You may choose either

- **A Payment for Actual Moving and Related Expenses, or**
- **A Fixed Payment in Lieu of Actual Moving and Related Expenses (if the business meets the eligibility requirements).**

What Costs are Included in a Payment for Actual Moving and Related Expenses?

A payment for actual reasonable moving and related expenses may cover costs for

- Transportation of personal property from your present location to the replacement location. (Generally, transportation costs are limited to a distance of 50 miles. If you plan to move beyond 50 miles, discuss your planned move with the public agency.)
- Packing, crating, unpacking, and uncrating personal property
- Disconnecting, dismantling, removing, reassembling, and installing relocated and substitute personal property. This includes connection to utilities available nearby and modifications necessary to adapt such property to the replacement structure or to the utilities or to adapt the utilities to the personal property
- Storage of personal property for a reasonable period of time, if required
- Insurance of personal property in connection with the move and required storage
- Any license, permit or certification required by the displaced business, to the extent that the cost is (1) necessary to its reestablishment at the replacement location and (2) does not exceed either the cost for one year or for the remaining useful life of the existing license, permit, or certification, whichever is less
- Professional services, including architect's, attorney's, and engineer s fees, and consultant's charges, necessary for (1) planning the move of the personal property, (2) moving the personal property, or (3) installing the relocated personal property at the replacement location
- Relettering signs and printing replacement stationary made obsolete by the move.
- Actual direct loss of personal property, not to exceed its present value or the cost of moving it
- Purchase of substitute personal property, not to exceed the cost of the item or the cost of moving it
- Searching for a replacement location, not to exceed $500

The public agency will explain all eligible moving costs, as well as those costs which are not eligible.

The public agency will also inform you of the documentation needed to support your claim. You must be able to account for all costs that you claim, so keep all your receipts.

You may elect to pay your moving costs directly and be reimbursed, or if you prefer, you may have the public agency pay the mover directly. If you wish to have the mover paid directly, let the public agency know **before** you move.

ect your mover with care. If you need help in selecting a reliable and reputable mover, contact the public agency for assistance

What is a Payment for Actual Direct Loss of Personal Property?

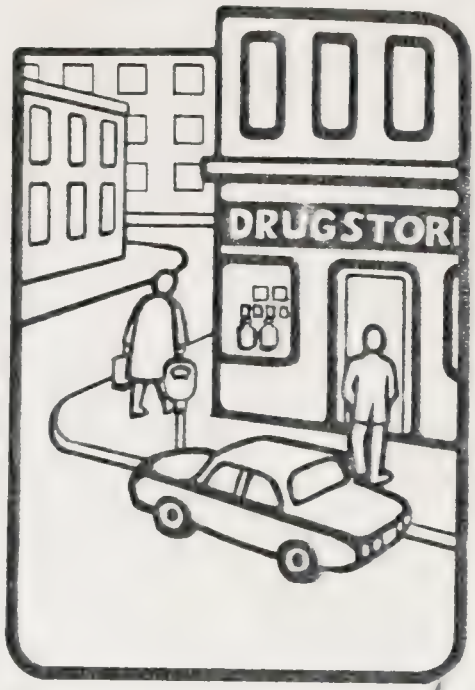
A payment for actual direct loss of personal property provides compensation for property that is not moved or promptly replaced with a "substitute item" at the replacement location. The payment is limited to the lesser of (1) the estimated cost of moving the property **or** (2) the fair market value of the property for its continued use at the old location.

To be eligible to receive this payment, you must show that you tried to sell the personal property. Any proceeds from the sale would be deducted from the claim. You also will be repaid for the reasonable costs incurred in attempting to sell the property. If not sold, the personal property must remain at the old location and ownership of the property must be transferred to the public agency before you may receive payment.

May I Replace Personal Property Instead of Moving It?

In some cases, it may be advantageous to you to replace an item of personal property with a comparable "substitute item" at the replacement location, rather than move it. In such cases, your relocation payment will be limited to the lesser of (1) the estimated cost to move the item to the replacement location, **or** (2) the actual cost of the substitute item delivered and installed at the replacement location. The estimated cost to move will be based on the acceptable bid or estimate obtained by the public agency. If you should sell or trade in a substitute item, the proceeds you receive or the trade-in value will be deducted from the amount of the claim.

If you plan to use this approach rather than moving an item, it is important that you discuss your plans with the public agency **before** you proceed. Failure to consult with the agency may result in your not being eligible for a payment. If not sold or traded, an item that is replaced with a "substitute item" must remain at the old location and ownership of the property must be transferred to the public agency before you may receive payment.



...at Are "Search" Costs?

...ou may be eligible for certain "search" costs, incurred in looking for a replacement location. The payment is limited to $500 and may include costs for:

- Transportation expenses.
- Time spent in searching for a replacement location.
- Reasonable fees paid to real estate agents or brokers to find a replacement location

The public agency will provide you with information as to the documentation which must be submitted in support of your claim for search costs.

Can I Arrange My Own Move?

Yes. You are encouraged to make your own moving arrangements. Consult with the public agency about your plans.

If you reach an agreement with the public agency on the amount of an acceptable low bid or estimate that is obtained by the public agency, you will not have to submit documentation in support of your moving expense claim. The claim would be limited to the amount of the agreed upon acceptable low bid or estimate

This is called a "self-move." If you self-move, you may move your personal property using your own employees and equipment or a commercial mover.

In the event that you and the public agency can not agree on an acceptable amount to cover the cost of the "self-move," you will have to submit full documentation in support of your claim

What is a Payment "In Lieu" of Moving and Related Expenses?

A payment in lieu of a payment for actual moving and related expenses to a business or farm operation is based on the average annual net earnings of the business or farm operation. The payment to an eligible business or farm operation may not be less than $2,500, nor more than $10,000. A payment to a nonprofit organization is $2,500.

To qualify for this payment:

- A displaced **business** (1) must be unable to relocate without a substantial loss of existing patronage, (2) must not be part of a commercial enterprise having another establishment which is not being acquired for a project, and (3) must meet certain minimum income requirements.
- A displaced **nonprofit organization** (1) must be unable to relocate without a substantial loss of its existing patronage, and (2) must not be part of an enterprise having another establishment which is not being acquired for a project.
- A displaced **farm operation** must meet certain minimum income requirements.

The public agency will inform you as to your eligibility to receive this payment and provide you with information as to the documentation you must submit to support your claim.

Remember, when you elect to take this payment you are **not** entitled to reimbursement for any other moving expenses.

What are the Minimum Income Requirements for an "In Lieu" Payment?

Ordinarily, to be eligible for the minimum "in lieu" payment, a displaced business or farm must have had average annual gross receipts of at least $2,000 or average annual net earnings of at least $1,000, for the two tax years prior to displacement. The public agency, however, may waive this test if it determines that the test would cause a substantial hardship.

I Own an Outdoor Advertising Display. What Relocation Payment May I Receive?

The owner of any outdoor advertising display(s) is eligible for a relocation payment for actual moving and related expenses. The owner is **not** eligible to receive a payment in lieu of actual moving and related expenses.

If the owner chooses not to relocate or replace the sign, the payment for "direct loss of personal property" is the lesser of (1) the depreciated reproduction cost of the sign, as estimated by the public agency, less the proceeds from its sale, or (2) the estimated cost of moving the sign without temporary storage. The public agency will inform you as to the exact costs that may be reimbursed



How Do I Obtain My Relocation Payment?

You must file a claim for reimbursement. The public agency will provide you with the required claim forms, assist you in completing them, and explain the type of documentation, if any, that you must submit in order to receive your relocation payments

If the expenses that you must meet prior to your move cause a hardship, discuss your financial needs with the public agency. You may be able to obtain an advance payment to help pay costs that you may have to meet before you move.



When Should I File My Claim?

You must file your claim within 18 months after you move. However, it is to your advantage to file as soon as possible after you move. The sooner you submit your claim, the sooner it can be processed and paid

If you are unable to file your claim within 18 months, the public agency may extend this time period

The public agency is required to pay you promptly after you file an acceptable claim. If there is any question regarding your right to a relocation payment or the amount of the payment, you will be notified, in writing, of the problem and the action you may take to resolve the matter.

Do I Have the Right to Appeal the Actions of the Public Agency?

'' you disagree with the public agency's 'ecision as to your right to a relocation ment or the amount of the payment, may appeal the decision to the public icy.

erally, you will have six months to file appeal. You may present your eal orally or in writing or in both ways ecessary, the public agency will assist in preparing your appeal.

If you are not satisfied with the public agency's determination, you may appeal the matter directly to the HUD Area Office serving your community

If you are not satisfied with the decision by the HUD Area Office, you may seek review of the matter by the courts

Do I Have to Pay Federal Income Taxes on the Relocation Payments I Receive?

No. Section 216 of the Uniform Act specifically states that you need not report relocation payments as part of your gross income for Federal tax purposes

For information on State or local income taxes, you should check with the State or local income tax office in your area or with your personal tax advisor

Where Can I Obtain a Copy of the HUD Relocation Regulations?

The Department of Housing and Urban Development (HUD) regulations administering the relocation provisions of the Uniform Act are contained in Part 42 of Title 24 of the Code of Federal Regulations. A copy of these regulations may be available from the public agency. If you are unable to obtain a copy of the regulations from the public agency, contact the HUD Area Office serving your community.

I Have Read All of the Information and Still Have Questions. What Should I Do?

If you have further questions contact the public agency and discuss your relocation concerns with the agency representative. If you still have questions, contact the HUD Area Office serving your community.

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September 1979
HUD-541-CPD

Relocation Assistance to Displaced Homeowners



Introduction



You have just received a "Notice of Displacement" from a public agency carrying out a public project with financial help from the Department of Housing and Urban Development (HUD). Sometime in the future it will be necessary that you move so that the public project may proceed.

A "Notice of Displacement" is **not** a notice to move. It is important that you do not move before all of your rights are explained to you by the public agency and you understand what you must do to receive the relocation payments and other assistance to which you are entitled.

To help you move, you will be provided with relocation payments and other relocation assistance. This assistance is described in HUD regulations that implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (called the "Uniform Act"). This brochure describes the most important features of these regulations and your rights under these rules.

This brochure may not answer all your questions. If you have more questions about your relocation, contact the public agency carrying out the project or the HUD Area Office serving your community. Ask your questions before you move. Afterwards, it may be too late.

The name of the person to contact at the public agency is indicated in the front of the brochure. The HUD Area Office serving your community is identified in the back of the brochure.

Summary of Relocation Assistance

Payment for Moving Expenses

You will receive either a **Fixed Payment** of up to $500 based on a schedule **or** a **Moving Expense Payment** to cover the actual cost of your move.

Replacement Housing Payment

If you owned and occupied your home for at least 180 days before receiving a written purchase offer from the public agency, you may be eligible for a **Replacement Housing Payment for Homeowners** in an amount up to $15,000 or a **Rental Assistance Payment** in an amount up to $4,000.

If you owned and occupied your home for less than 180 days, but more than 90 days, before receiving the written purchase offer from the public agency, you may be eligible for a **Rental Assistance Payment** or a **Downpayment Assistance Payment** in an amount up to $4,000.

Other Rights and Assistance

You cannot be required to move by the public agency unless you have been given opportunities to move to comparable replacement housing that is decent, safe, and sanitary and that you can afford.

Information about the availability of suitable replacement housing will be provided to you on a continuing basis by the public agency.

Other help in finding and obtaining suitable housing and in minimizing the impact of the move will be provided, as needed, by the public agency. This includes help needed to overcome any discriminatory practices that you may encounter in obtaining housing of your choice.

All replacement housing will be inspected by the public agency to ensure that it meets established standards.

You will receive help from the public agency in filling out any claim form needed to obtain a relocation payment.

Questions and Answers

You may appeal the public agency's decision as to your right to a relocation payment or the amount of the payment or the suitability of the replacement housing to which you have been referred. The initial appeal must be filed with the public agency.



How Will the Public Agency Know What Relocation Help I Need?

You will be contacted and personally interviewed by a representative of the public agency to determine your relocation needs and preferences for replacement housing and other services. The interviewer will ask certain questions about you and your family. It is to your advantage to provide the information so that the public agency can assist you in moving with a minimum of hardship. The information you give will be kept in confidence by the public agency.

How Soon Will I Have to Move?

In most cases, the person moving and the public agency should be able to work out a mutually agreeable date for the move. You will be given enough time to make plans for moving. Unless there is an urgent need for your property such as a health or safety emergency, you will not be required to move without at least 90 days advance written notice.

Also, you will not be required to move, unless opportunities to move to comparable replacement housing are available to you. You will be provided with referrals to available housing that has been inspected by the public agency to insure that it meets established standards.

Will I Have To Move Before Being Paid for My Property?

If you reach a voluntary agreement with the public agency to sell your property, you cannot be required to move before you receive the agreed purchase price. If the property is acquired through an eminent domain proceeding, you cannot be required to move before the estimated fair market value of the property has been deposited with the court. In most States you will be able to withdraw this amount immediately, less any amounts necessary to pay off any mortgage or other liens on the property and to resolve any special ownership problems. Your early withdrawal of your share of the money will not affect your right to seek additional compensation for your property.

Will I Have To Pay Rent to the Public Agency Before I Move?

You may be required to pay a fair rent to the public agency for the period between the acquisition of your property and the date that you move. However, the rent, including utilities, for your dwelling will not exceed 25 percent of your average monthly gross income.

What Is Comparable Replacement Housing?

Comparable replacement housing is housing that is currently available, is most representative of the housing from which you are being moved, and is:

- Decent, safe and sanitary.
- Available at a rental or purchase price that you can afford. Your monthly housing costs, including utility charges, should not exceed 25 percent of the gross income of all adult members of your household.
- Reasonably accessible to your place of employment or potential place of employment.
- Reasonably located with respect to transportation and other public and commercial facilities, such as schools and shopping.
- Available to all persons regardless of race, color, religion, sex, or national origin.

What If I Find My Own Replacement Housing?

You have every right to find your own replacement housing. However, **before** you rent or buy, contact the public agency. The public agency must inspect the unit to make sure that the housing is decent, safe and sanitary. If the housing unit is not decent, safe, and sanitary, you will not receive a **Replacement Housing Payment.**





What Is Decent, Safe, and Sanitary Housing?

Decent, safe, and sanitary housing is housing that:

- Meets applicable housing and occupancy requirements.
- Is structurally sound, weathertight, and in good repair.
- Has adequate living space for the occupants.
- If food preparation is required, has a kitchen with a fully usable sink, hot and cold running water, and connections for a stove and refrigerator.
- Has a separate and complete bathroom that is well-lighted and ventilated, and has hot and cold running water.
- Has an adequate and safe wiring system for lighting and other electrical services.
- Has heating as required by climatic conditions.
- Meets HUD standards governing lead-based paint
- If you are physically handicapped, meets appropriate standards governing housing for the handicapped.

If you find a replacement house that generally meets the above standards, contact the public agency and request that the unit be inspected before you rent or buy.

Will the Public Agency Help Me Find a Subsidized Housing Unit?

If you would like to move to a Government-assisted housing unit, let the public agency representative know of your interest. In some localities, preference for such housing is given to persons required to move by a public project.

You will receive help in identifying those Federal, State, or local housing programs in your locality for which you may qualify. You will also be given assistance in completing any required application forms which must be submitted to determine your eligibility.



What If I Encounter a Problem In Obtaining Housing of My Choice?

It is possible that you may encounter a problem in buying or renting housing of your choice. If this should happen, notify the public agency immediately. The public agency will look into the matter and try to resolve it. You will receive this help whether you were referred to the housing unit or found it yourself.

If you are unable to buy or rent a housing unit because of discriminatory practices on the part of a real estate broker, rental agent, lender, or a property owner, the public agency will help you file a formal housing discrimination complaint with HUD or the appropriate State or local fair housing agency. If you don't get the help you need, contact the HUD Area Office serving your community.

What Other Relocation Services Will I Receive?

In addition to help in obtaining a comparable replacement home, other assistance, when necessary, will be provided by the public agency in order to minimize the impact of your move. This assistance may include referral to appropriate public and private agencies that may provide services concerning housing financing, employment, health, welfare, or legal assistance.

The range of services depends on the needs of the person being displaced. You should ask the public agency representative to tell you about the specific services that will be available to help you and your family.

What Kind of Relocation Payments Are Available?

There are two kinds of relocation payments. A relocation payment to cover the cost of your move and another to assist in paying for the replacement housing to which you move.

1. Moving Expense Payments. Every displaced person is entitled to a relocation payment to cover the reasonable cost of his move. You may choose either:
- A **Payment For Actual Moving Expenses,** or
- A **Fixed Payment.**

2. Replacement Housing Payments. An eligible homeowner will receive a replacement housing payment to assist in paying for the decent, safe, and sanitary replacement home to which he moves. If you owned and occupied your home for at least 180 days prior to receiving the public agency's written offer to buy it, you may be eligible to receive either:
- A **Replacement Housing Payment For Homeowners** in an amount up to $15,000; **or**
- A **Rental Assistance Payment** in an amount up to $4,000.

If you owned and occupied your home between 90 and 180 days prior to receiving the public agency's written offer to buy it, you may be eligible to receive either:
- A **Rental Assistance Payment** in an amount up to $4,000; **or**
- A **Downpayment Assistance Payment** in an amount up to $4,000.



What If I Choose a Payment To Cover My Actual Moving Expenses?

If you choose a payment to cover your **Actual Moving Expenses,** you may include in your claim the reasonable costs of:
- Moving your household goods, including necessary insurance on the household goods while in transit.
- Disconnecting and reconnecting household appliances.
- Transportation for you and your family.
- Storage of household goods, as may be necessary.

The public agency will explain any other eligible moving costs, as well as those which are not eligible. You must be able to account for any costs that you incur so keep all your receipts.

You may elect to pay your moving costs directly and be repaid by the public agency or, if you prefer, you may have the public agency pay the mover directly. If you wish to have the mover paid directly, let the public agency know **before** you move.

Select your mover with care. If you need help in selecting a reliable and reputable mover, contact the public agency for assistance.

What If I Choose a Fixed Moving Expense Payment?

If you choose a **Fixed Moving Expense Payment,** you will receive a moving expense allowance which is based on the number of rooms of furniture you will be moving, as shown on a schedule, plus a dislocation allowance of $200. The public agency has copies of the schedule for your examination.

For many people, this payment is the most advantageous. No special documentation is required to support your claim. You need only move your personal property and complete the appropriate claim form in order to receive your payment.

I Owned My Home At Least 180 Days. Describe the Replacement Housing Payment For 180-Day Homeowners That I May Receive.

If you owned and occupied your home for at least 180 days before the public agency gave you a written offer to buy it, you may be entitled to a **Replacement Housing Payment** in an amount up to $15,000 to help you buy a comparable replacement home.

To qualify for this payment, you must purchase and occupy a decent, safe, and sanitary replacement home within one year after you move or receive final payment for the property acquired by the public agency, whichever is later. The one-year period is required by law and cannot be waived. You will be informed of the date by which you must purchase and occupy replacement housing

The payment is the sum of the following three costs:

- **Differential Amount.** This amount is to cover the difference, if any, that results when the public agency's acquisition payment for your home is less than the reasonable cost of a comparable replacement home (or the cost of the replacement home that you actually buy, if it is less). The public agency will determine the cost of available comparable replacement housing and explain the basis of its determination. That information should help you decide how much you wish to pay for replacement housing.

You are free to purchase any housing unit of your choice. If the final purchase price is less than the cost of a comparable replacement home, the payment will be limited to the actual difference. If it exceeds the cost of a comparable replacement home, the payment will be based on the cost of a comparable home.

For example, in determining the differential amount, let's say that the acquisition payment for your home was $20,000 and the public agency determines that available comparable replacement housing that is most representative of your home will cost $25,000.

- If you pay $24,000 for a replacement home, you will receive $4,000 (the difference between the acquisition payment and the actual cost of the replacement home).
- If you pay $27,000 for the replacement home, you would receive the maximum $5,000 differential payment (the difference between the acquisition payment and the cost of the comparable replacement home).
- **Increased Interest Costs.** This amount covers any increase in interest costs for a new mortgage. To be eligible, the mortgage on your home must have been a valid lien for at least 180 days before the public agency offered to buy it
- **Incidental Expenses.** This includes typical closing costs on the replacement home but not any prepaid expenses such as taxes and insurance.

Remember, the payment is based on the sum of the differential amount, increased interest costs, and incidental expenses. If you are ineligible for one of these costs, you may still be eligible for the others However, the **total** reimbursement that you may receive for all costs is $15,000

I Owned My Home At Least 180 Days. Will I Receive a Replacement Housing Payment If I Decide To Rent Rather Than Buy A Replacement Home?

Yes. If you should decide to rent and not buy a replacement home, you may be eligible to receive a **Rental Assistance Payment** in an amount up to $4,000 to help you rent a replacement unit. This payment is discussed later in this brochure.

I Owned My Home For More Than 90 Days But Less Than 180 Days. Am I Eligible For a Replacement Housing Payment?

If you owned and occupied your home for more than 90 days (but less than 180 days) before the public agency offered to buy it, you may be entitled to a replacement housing payment in an amount up to $4,000, to help you rent or buy a replacement home. You may receive either a **Rental Assistance Payment** or a **Downpayment Assistance Payment.** To qualify for this payment, you must rent (or purchase) and occupy a decent, safe, and sanitary home within one year after being displaced. However, the public agency may extend this one-year period.

How Is a Rental Assistance Payment Determined?

If you decide to rent and not buy a replacement home, you may be eligible to receive a **Rental Assistance Payment** to help you rent a decent, safe and sanitary replacement home for a four-year period. To be eligible for a **Rental Assistance Payment** you must have occupied your present home for at least 90 days before receiving the public agency's written purchase offer. The maximum payment is $4,000 and will be paid to you in a lump sum, unless you prefer periodic payments. The payment is computed in the following manner:

First, the assistance needed for one month is determined by subtracting the base monthly housing cost at your

present home from the rent, including utility costs, for the replacement home (or a comparable replacement home, if that rent is lower). That monthly assistance, if any, is multiplied by 48 and the total amount, not to exceed $4,000, will be paid to you.

The base monthly housing cost at your present home is the fair market rent for your home, including utility costs, or 25 percent of your monthly gross income, whichever is less.

For example, let's say that your base monthly housing cost is $100 and the rent, including utility costs, for a comparable replacement home is $150.

Example 1. You rent a decent, safe, and sanitary home for $160 per month, including estimated utility charges. You will receive a payment of $2,400. That amount is determined by multiplying the additional $50 per month needed to pay for a comparable replacement home by 48 months. The amount of your payment cannot exceed the cost of a comparable replacement home.

Example 2. You rent a decent, safe and sanitary home for $140, including estimated utility charges. You will receive a payment of $1,920. That amount is determined by multiplying the extra $40 per month needed to pay the increased housing cost at the replacement home by 48 months. The amount of the payment is based on the difference between the monthly housing cost at your present home and the actual housing cost at the replacement home.



How Is a Downpayment Assistance Payment Determined?

If you decide to buy a replacement home, you may be eligible to receive a **Downpayment Assistance Payment** to help you buy a decent, safe and sanitary replacement home. To be eligible for a **Downpayment Assistance Payment,** you must have occupied your present home for at least 90 days before the public agency gave you a written offer to buy it. The full amount of the downpayment must be applied to the cost of purchasing the replacement home and must be shown on the closing statement.

If you select a **Downpayment Assistance Payment,** there is a matching requirement when the costs exceed $2,000. If the needed downpayment and incidental expenses are in excess of $2,000, you will receive $2,000 plus 50 percent of any amount over $2,000 that is required as a downpayment. The maximum payment is $4,000.

For example, let's say that the amount required as a downpayment for purchasing a decent, safe and sanitary replacement home is $3,500 and incidental expenses are $500, for a total of $4,000. In this case, you will receive a payment of $3,000. You would receive the first $2,000 plus one half of the amount over $2,000, which is in this case, $1,000. The balance, $1,000, would be your matching share.

How Do I Obtain My Relocation Payments?

You must file a claim for reimbursement The public agency will provide you with the required claim forms, assist you in completing them, and explain the type of documentation, if any, that you must submit in order to receive your relocation payments.

If the expenses that you must meet prior to your move cause a hardship, discuss your financial needs with the public agency. You may be able to obtain an advance payment to help meet costs, such as a good faith deposit that you may have to meet before occupying your replacement home.

When Should I File My Claim?

You must file your claim within 18 months after you move. However, it is to your advantage to file as soon as possible after you move. The sooner you submit your claim, the sooner it can be processed and paid. If you are unable to file your claim within 18 months, the public agency may extend this time period.

Be careful not to confuse this 18-month period with the 12-month period within which you must purchase (or rent) and occupy a replacement dwelling in order to be eligible for a **Replacement Housing Payment.**



The public agency is required to pay you promptly after you file an acceptable claim. If there is any question regarding your right to a relocation payment or the amount of the payment, you will be notified, in writing, of the problem and the action you may take to resolve the matter.

Do I Have To Pay Federal Income Taxes on the Relocation Payments I Receive?

No. Section 216 of the Uniform Act specifically states that you need not report relocation payments as part of your gross income for Federal tax purposes. For information on State or local income taxes, you should check with the State or local income tax office in your area or with your personal tax advisor.

Do I Have The Right To Appeal the Actions of the Public Agency?

You have the right to appeal the public agency's actions with respect to:

• **Suitability of Replacement Housing.** If you believe that the public agency has failed to meet its obligations to ensure that you have been given reasonable opportunities to relocate to a comparable replacement home that meets applicable standards before you are required to move, you may file a formal appeal. The appeal may be filed before or after you move.

• **Determinations on Relocation Payments.** If you disagree with the public agency's decision as to your right to a relocation payment or the amount of the payment, you may appeal the decision to the public agency.

Generally, you will have six months to file your appeal with the public agency. You may present your appeal orally or in writing or in both ways. If necessary, the public agency will assist you in preparing your appeal.

If you are not satisfied with the public agency's determination, you may appeal the matter directly to the HUD Area Office serving your community.

If you are not satisfied with the decision by the HUD Area Office, you may seek review of the matter by the courts.

Where Can I Obtain a Copy of the HUD Relocation Regulations?

The Department of Housing and Urban Development (HUD) regulations administering the relocation provisions of the Uniform Act are contained in Part 42 of Title 24 of the Code of Federal Regulations. A copy of these regulations may be available from the public agency. If you are unable to obtain a copy of the regulations from the public agency, contact the HUD Area Office serving your community.

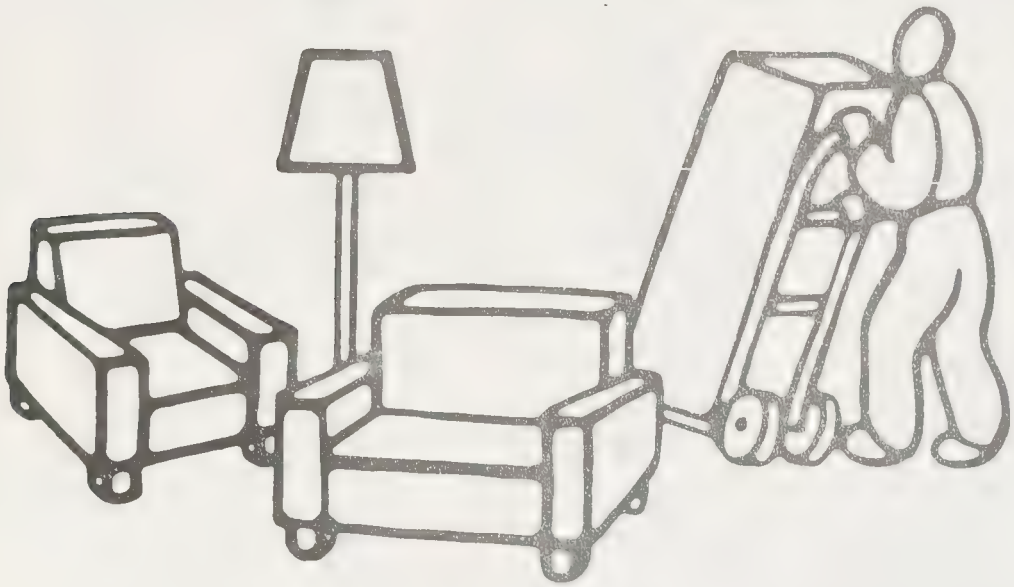
I Have Read All of the Information and Still Have Questions. What Should I Do?

If you have further questions contact the public agency and discuss your relocation concerns with the agency representative. If you still have questions, contact the HUD Area Office serving your community.

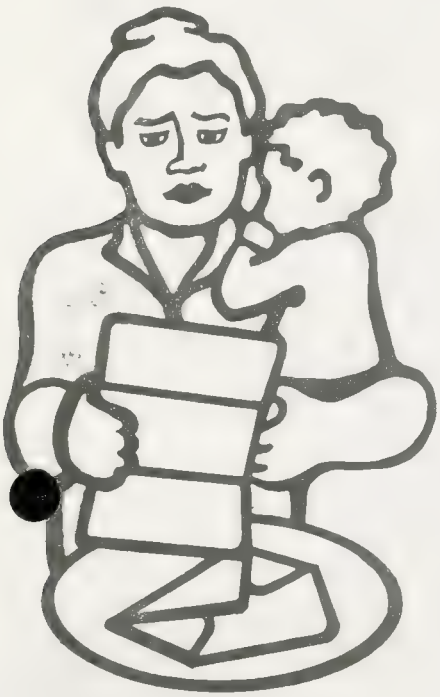
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Relocation Assistance To Displaced Tenants



Introduction



You have just received a "Notice of Displacement" from a public agency carrying out a public project with financial help from the Department of Housing and Urban Development (HUD). Sometime in the future it will be necessary that you move so that the public project may proceed.

A "Notice of Displacement" is **not** a notice to move. It is important that you do not move before all of your rights are explained to you by the public agency and you understand what you must do to receive the relocation payments and other assistance to which you are entitled.

To help you move, you will be provided with relocation payments and other relocation assistance. This assistance is described in HUD regulations that implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (called the "Uniform Act"). This brochure describes the most important features of these regulations and your rights under these rules.

This brochure may not answer all your questions. If you have more questions about your relocation, contact the public agency carrying out the project or the HUD Area Office serving your community. Ask your questions before you move. Afterwards, it may be too late.

The name of the person to contact at the public agency is indicated in the front of the brochure. The HUD Area Office serving your community is identified in the back of the brochure.

Summary of Relocation Assistance

Payment for Moving Expenses

You will receive either a fixed payment of up to $500 based on a schedule **or** a moving expense payment to cover the actual reasonable cost of your move.

Replacement Housing Payment

If you occupied your home for at least 90 days before the effective date of the public agency's "Notice of Displacement," you may be eligible for a RENTAL ASSISTANCE PAYMENT or a DOWNPAYMENT ASSISTANCE PAYMENT in an amount up to $4,000.

Other Rights and Assistance

You cannot be required to move by the public agency unless you have been given opportunities to move to comparable replacement housing that is decent, safe, and sanitary and that you can afford.

Information about the availability of suitable replacement housing will be provided to you on a continuing basis by the public agency.

Other help in finding and obtaining suitable housing and in minimizing the impact of the move will be provided, as needed, by the public agency. This includes help needed to overcome any discriminatory practices that you may encounter in obtaining housing of your choice.

All replacement housing will be inspected by the public agency to ensure that it meets established standards.

You will receive help from the public agency in filling out any claim form needed to obtain a relocation payment.

Questions and Answers

You may appeal the public agency's decision as to your right to a relocation payment or the amount of the payment or the suitability of the replacement housing to which you have been referred. The initial appeal must be filed with the public agency.



How Will the Public Agency Know What Relocation Help I Need?

You will be contacted and personally interviewed by a representative of the public agency to determine your relocation needs and preferences for replacement housing and other services. The interviewer will ask certain questions about you and your family. It is to your advantage to provide the information so that the public agency can assist you in moving with a minimum of hardship. The information you give will be kept in confidence by the public agency.

How Soon Will I Have to Move?

In most cases, the person moving and the public agency should be able to work out a mutually agreeable date for the move. You will be given enough time to make plans for moving. Unless there is an urgent need for your property, such as a health or safety emergency, you will not be required to move without at least 90 days advance written notice.

Also, you will not be required to move, unless opportunities to move to comparable replacement housing are available to you. You will be provided with referrals to available housing that has been inspected by the public agency to insure that it meets established standards

Will I Have To Pay Rent To The Public Agency Before I Move?

You may be required to pay a fair rent to the public agency for the period between the acquisition of your property and the date that you move. However, the rent for your dwelling will not exceed 25 pecent of your average monthly gross income or your current rent, including utilities, whichever is less.

What Is Comparable Replacement Housing?

Comparable replacement housing is housing that is currently available, is most representative of the housing from which you are being moved, and is:

- Decent, safe and sanitary.
- Available at a rental or purchase price that you can afford. Your monthly housing costs, including utility charges, should not exceed 25 percent of the gross income of all adult members of your household.
- Reasonably accessible to your place of employment or potential place of employment.
- Reasonably located with respect to transportation and other public and commercial facilities, such as schools and shopping.
- Available to all persons regardless of race, color, religion, sex, or national origin.

What If I Find My Own Replacement Housing?

You have every right to find your own replacement housing. However, **before** you rent or buy, contact the public agency. The public agency must inspect the unit to make sure that the housing is decent, safe and sanitary. If the housing unit is not decent, safe, and sanitary, you will not receive a replacement housing payment.



What Is Decent, Safe, and Sanitary Housing?

Decent, safe, and sanitary housing is housing that:

- Meets applicable housing and occupancy requirements.
- Is structurally sound, weathertight, and in good repair.
- Has adequate living space for the occupants.
- If food preparation is required, has a kitchen with a fully usable sink, hot and cold running water, and connections for a stove and refrigerator.
- Has a separate and complete bathroom that is well-lighted and ventilated, and has hot and cold running water.
- Has an adequate and safe wiring system for lighting and other electrical services.
- Has heating as required by climatic conditions.
- Meets HUD standards governing lead-based paint.
- If you are physically handicapped, meets appropriate standards governing housing for the handicapped.

If you find a replacement house that generally meets the above standards, contact the public agency and request that the unit be inspected before you rent or buy.

Will The Public Agency Help Me Find A Subsidized Housing Unit?

If you would like to move to a government-assisted housing unit, let the public agency representative know of your interest. In some localities, preference for such housing is given to persons required to move by a public project.

You will receive help in identifying those Federal, State, or local housing programs in your locality for which you may qualify. You will also be given assistance in completing any required application forms which must be submitted to determine your eligibility.

What If I Encounter a Problem In Obtaining Housing of My Choice?

It is possible that you may encounter a problem in buying or renting housing of your choice. If this should happen, notify the public agency immediately. The public agency will look into the matter and try to resolve it. You will receive this help whether you were referred to the housing unit or found it yourself.

If you are unable to buy or rent a housing unit because of discriminatory practices on the part of a real estate broker, rental agent, lender, or a property owner, the public agency will help you file a formal housing discrimination complaint with HUD or the appropriate State or local fair housing agency. If you don't get the help you need, contact the HUD Area Office serving your community.

What Other Relocation Services Will I Receive?

In addition to help in obtaining a comparable replacement home, other assistance, when necessary, will be provided by the public agency in order to minimize the impact of your move. This assistance may include referral to appropriate public and private agencies that may provide services concerning housing financing, employment, health, welfare, or legal assistance.

The range of service depends on the needs of the person being displaced. You should ask the public agency representative to tell you about the specific services that will be available to help you and your family.

What Kind of Relocation Payments Are Available?

There are two kinds of relocation payments. A relocation payment to cover the cost of your move and another to assist in paying for the replacement housing to which you move

1. Moving Expense Payments. Every displaced person is entitled to a relocation payment to cover the reasonable cost of his move. You may choose either:

- **A Payment For Actual Moving Expenses, or**
- **A Fixed Payment.**

2. Replacement Housing Payments. An eligible displaced person will receive a replacement housing payment to assist in paying for the decent, safe, and sanitary replacement home to which he/she moves. If you occupied your home at least 90 days before the effective date of the public agency's "Notice of Displacement," you may be eligible to receive either:

- **A Rental Assistance Payment in an amount up to $4,000; or**
- **A Downpayment Assistance Payment in an amount up to $4,000.**

What If I Choose a Payment To Cover My Actual Moving Expenses?

If you choose a payment to cover your actual moving expenses, you may include in your claim the reasonable costs of

- Moving your household goods, including necessary insurance on the household goods while in transit.
- Disconnecting and reconnecting household appliances
- Transportation for you and your family
- Storage of household goods, as may be necessary

The public agency will explain any other eligible moving costs, as well as those which are not eligible. You must be able to account for any costs that you incur, so keep all your receipts

You may elect to pay your moving costs directly and be repaid by the public agency or, if you prefer, you may have the public agency pay the mover directly

If you wish to have the mover paid directly, let the public agency know **before** you move.

Select your mover with care. If you need help in selecting a reliable and reputable mover, contact the public agency for assistance.

What If I Choose a Fixed Moving Expense Payment?

If you choose a fixed moving expense payment, you will receive a moving expense allowance which is based on the number of rooms of furniture you will be moving, as shown on a schedule, plus a dislocation allowance of $200. The public agency has copies of the schedule for your examination.

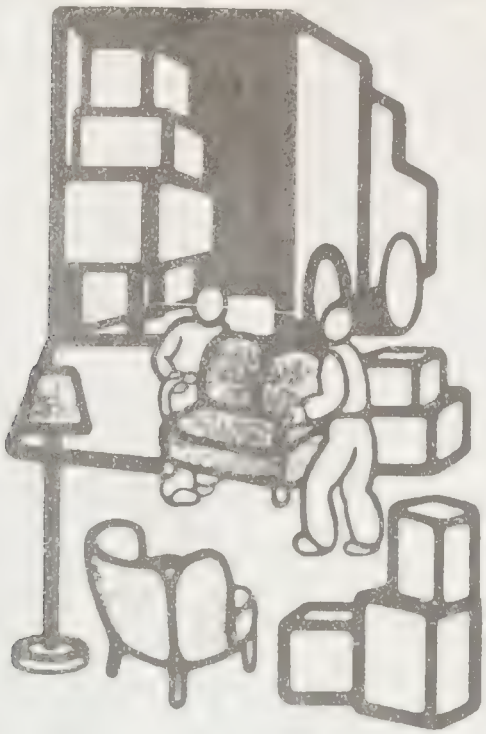
For many people, this payment is the most advantageous. No special documentation is required to support your claim. You need only move your personal property and complete the appropriate claim form in order to receive your payment.

I Occupied My Home For More Than 90 Days. Am I Eligible For A Replacement Housing Payment?

If you occupied your home for more than 90 days before the effective date of the public agency's "Notice of Displacement," you may be eligible for a replacement housing payment to help you rent or buy a replacement home.

If your home is acquired by a public agency, the "Notice of Displacement" is effective on the date the public agency makes its first written purchase offer to the owner of property. If a public agency does not acquire the property, the "Notice of Displacement" is effective on a different date. In either case, the date will be specified in the "Notice of Displacement."

In addition, to be eligible for a replacement housing payment, you must rent (or purchase) and occupy a decent, safe and sanitary home within one year after you move from the property acquired by the public agency. If you are unable to meet this requirement within the one-year period, the public agency may extend the period.



How Is A Rental Assistance Payment Determined?

If you decide to rent and not buy a replacement home, you may be eligible to receive a RENTAL ASSISTANCE PAYMENT to help you rent a decent, safe, and sanitary replacement home for a four-year period. To be eligible for a RENTAL ASSISTANCE PAYMENT you must have occupied your present home for at least 90 days prior to the effective date of the "Notice of Displacement." The maximum payment is $4,000 and will be paid to you in a lump sum, unless you prefer periodic payments. The payment is computed in the following manner.

First, the assistance needed for one month is determined by subtracting the base monthly housing cost at your present home from the rent, including utility costs, for the replacement home (or a comparable replacement home, if that rent is lower). That monthly assistance, if any, is multiplied by 48 and the total amount, not to exceed $4,000, will be paid to you.

The base monthly housing cost at your present home is the current rent for your home, including utility costs, or 25 percent of your monthly gross income, whichever is less.

For example, let's say that your base monthly housing cost is $100 and the rent, including utility costs, for a comparable replacement home is $150.

Example 1. You rent a decent, safe and sanitary home for $160 per month, including estimated utility charges. You will receive a payment of $2,400. That amount is determined by multiplying the additional $50 per month needed to pay for a comparable replacement home by 48 months. The amount of your payment cannot exceed the cost of a comparable replacement home

Example 2. You rent a decent, safe and sanitary home for $140, including estimated utility charges. You will receive a payment of $1,920. That amount is determined by multiplying the extra $40 per month needed to pay the increased housing cost at the replacement home by 48 months. The amount of the payment is based on the difference between the monthly housing cost at your present home and the actual housing cost at the replacement home.





How Is A Downpayment Assistance Payment Determined?

If you decide to buy a replacement home, instead of continuing to rent, you may be eligible to receive a DOWNPAYMENT ASSISTANCE PAYMENT to help you buy a decent, safe, and sanitary replacement home. To be eligible for a DOWNPAYMENT ASSISTANCE PAYMENT, you must have occupied your present home at least 90 days prior to the effective date of the "Notice of Displacement." The full amount of the downpayment must be applied to the cost of purchasing the replacement home and must be shown on the closing statement. The closing statement must also indicate the incidental expenses incurred in purchasing the home.

If you select a DOWNPAYMENT ASSISTANCE PAYMENT, there is a matching requirement when the costs exceed $2,000. If the needed downpayment and incidental expenses are in excess of $2,000, you will receive $2,000 plus 50 percent of any amount over $2,000 that is required as a downpayment. The maximum payment is $4,000.

For example, let's say that the amount required as a downpayment for purchasing a decent, safe, and sanitary replacement home is $3,500 and incidental expenses are $500, for a total of $4,000. In this case, you will receive a payment of $3,000. You would receive the first $2,000 plus one-half of the amount over $2,000 which, in this case, is $1,000. The balance, $1,000, would be your matching share.

How Do I Obtain My Relocation Payments?

You must file a claim for reimbursement. The public agency will provide you with the required claim forms, assist you in completing them, and explain the type of documentation, if any, that you must submit in order to receive your relocation payments.

If the expenses that you meet prior to your move cause a hardship, discuss your financial needs with the public agency. You may be able to obtain an advance payment to help meet costs, such as a rental or utility deposit, that you may have to meet before occupying your replacement home.

When Should I File My Claim?

You must file your claim within 18 months after you move. However, it is to your advantage to file as soon as possible after you move. The sooner you submit your claim, the sooner it can be processed and paid. If you are unable to file your claim within 18 months, the public agency may extend this time period.

Be careful not to confuse this 18-month period with the 12-month period within which you must purchase and occupy a replacement dwelling in order to be eligible for a replacement housing payment.

The public agency is required to pay you promptly after you file an acceptable claim. If there is any question regarding your right to a relocation payment or the amount of the payment, you will be notified, in writing, of the problem and the action you may take to resolve the matter.

Do I Have to Pay Federal Income Taxes on the Relocation Payments I Receive?

No. Section 216 of the Uniform Act specifically states that you need not report relocation payments as part of your gross income for Federal tax purposes.

For information on State or local income taxes, you should check with the State or local income tax office in your area or with your personal tax advisor.

Do I Have the Right to Appeal the Actions of the Public Agency?

You have the right to appeal the public agency's actions with respect to:

- **Suitability of Replacement Housing.** If you believe that the public agency has failed to meet its obligations to ensure that you have been given reasonable opportunities to relocate to a comparable replacement home that meets applicable standards before you are required to move, you may file a formal appeal. The appeal may be filed before or after you move.

- **Determinations on Relocation Payments.** If you disagree with the public agency's decision as to your right to a relocation payment or the amount of the payment, you may appeal the decision to the public agency.

Generally, you will have six months to file your appeal with the public agency. You may present your appeal orally or in writing or in both ways. If necessary, the public agency will assist you in preparing your appeal.

If you are not satisfied with the public agency's determination, you may appeal the matter directly to the HUD Area Office serving your community.

If you are not satisfied with the decision by the HUD Area Office, you may seek review of the matter by the courts.

Where Can I Obtain a Copy of the HUD Relocation Regulations?

The Department of Housing and Urban Development (HUD) regulations administering the relocation provisions of the Uniform Act are contained in Part 42 of Title 24 of the Code of Federal Regulations. A copy of these regulations may be available from the public agency. If you are unable to obtain a copy of the regulations from the public agency, contact the HUD Area Office serving your community.

I Have Read All of the Information and Still Have Questions. What Should I Do?

If you have further questions, contact the public agency and discuss your relocation concerns with the agency representative. If you still have questions, contact the HUD Area Office serving your community.

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"YELLOW BOOK"

1981 Revision

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Foreword

During the 1960s both the number and dollar amounts of government programs increased substantially. These programs were aimed at improving the quality of American life. In the 1970s the number of new programs established was considerably less, but the total dollar amount continued to grow. This increase in government programs brought with it an increased demand for full accountability by those entrusted with the responsibility for administering the programs. Auditing is an integral element of this accountability, and governments are responsible for ensuring that appropriate audits are made.

In the past few years, we have seen an unprecedented interest in government auditing. Public officials, legislators, and private citizens want and need to know not only whether government funds are handled properly and in compliance with laws and regulations, but also whether government organizations are achieving the purposes for which programs were authorized and funded and are doing so economically and efficiently.

Forty years ago auditors concentrated most of their efforts on auditing the vouchers which supported expenditures. But today, auditors are also concerned with the economy, efficiency, and effectiveness of government operations.

Auditing plays an important role in government since it is a management tool for evaluating whether operations are executed economically, efficiently, and effectively. While it is true that auditors have the responsibility to evaluate government operations, management cannot and should not completely rely on the auditors to detect problems and recommend solutions. The auditors cannot do it all. Therefore government managers, as part of their management responsibility, must routinely assess their own operations to assure themselves, their superiors, legislators, and private citizens that operations are well controlled and meet high expectations. If problems are found, by the auditor or by management, it is management's responsibility to act promptly and properly to initiate corrective action.

In 1972 the U.S. General Accounting Office (GAO) issued "Standards for Audit of Governmental Organizations, Programs, Activities & Functions," better known as the "yellow book." Since issuing the standards, GAO has issued publications explaining and supplementing the standards and demonstrating how auditing can improve the efficiency and effectiveness of government operations and programs. These publications are identified on the inside of the front cover.

The standards as issued in 1972 have proved to be sound and durable and have been generally accepted by all levels of government as well as by the accounting profession. The Office of Management and Budget (OMB) has cited the standards in OMB circulars as basic audit criteria for Federal executive departments and agencies to follow. Also, Federal legislation requires that the inspectors general follow the standards.

These standards have been revised in order to:

1. Expand the explanations of some standards in response to questions about them.

2. Separate the standards for financial and compliance audits from those for economy and efficiency audits and program results audits.

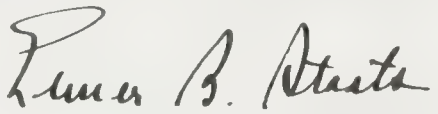
3. Incorporate standards relating to audits in which automatic data processing systems are used by the entity.

4. Add a standard to make more specific the auditor's responsibility for detecting fraud and abuse in government programs and operations.

This revision of the standards is based on comments and suggestions that GAO has received since the standards were originally issued. These comments and suggestions were considered in preparing a draft of the revised standards which was sent to audit officials at all levels of government, the public accounting profession, professional organizations, academia, and other interested groups and persons for review and comment. The comments received were reviewed and incorporated as appropriate in these final revised standards.

We are grateful to those government officials, professional organizations, public accounting officials, and members of the academic community who have commented on the standards.

This edition of the standards supersedes the 1972 and 1974 editions of the standards and the March 1979 booklet entitled "Additional GAO Audit Standards, Auditing Computer-Based Systems."



Elmer B. Staats
Comptroller General
of the United States

February 27, 1981

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Introduction

Purpose

This statement contains audit standards that must be followed by Federal auditors for audits of Federal organizations, programs, activities, functions, and funds received by contractors, nonprofit organizations, and other external organizations. They are recommended for audits of State and local government organizations, programs, activities, and functions performed by State or local government auditors or by public accountants.[1] These standards relate to the scope and quality of audit effort and to the characteristics of professional and meaningful audit reports.

The American Institute of Certified Public Accountants (AICPA) has adopted standards and procedures that are applicable to audits performed to express opinions on the fairness with which an organization's financial statements present the financial position, the results of operations, and changes in financial position, if applicable.[2]

The AICPA standards are generally accepted for such audits and have been incorporated into this statement. As additional "statements on auditing standards" (SAS) and other pronouncements are issued by the AICPA, they should be adopted and incorporated into these standards unless GAO excludes them by formal announcement. GAO will also establish a formal system for issuing government auditing pronouncements, interpretations, and guidance to the audit community. However, the interests of many users of reports on government audits are broader than those that can be satisfied by financial audits. To fulfill these broader interests, the standards in this statement include not only the essence of those prescribed by AICPA but additional standards for audits of an expanded scope, as we will explain.

The Office of Management and Budget (OMB) included these standards as basic audit criteria for Federal executive departments and agencies in OMB Circular A-73.[3] Additional guidance to Federal agencies is contained in the GAO publication entitled, "Internal Auditing in Federal Agencies." Also, Federal legislation requires that the inspectors general comply with audit standards established by the Comptroller General for audits of Federal establishments, organizations,

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[1] *See Attachment P of OMB Circular A-102 (revised Oct. 22, 1979) "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments." This attachment establishes audit requirements for State and local governments and Indian tribal governments that receive Federal assistance. It requires that audits of these entities be made in accordance with the standards in this statement.*

[2] *The basic standards are included in "Codification of Statements on Auditing Standards, Nos. 1 to 33," issued in 1981 by AICPA.*

[3] *See section 6 of OMB Circular No. A-73 (revised May 15, 1978), "Audit of Federal Operations and Programs."*

programs, activities, and functions. The legislation further states that the inspectors general should ensure that any work performed by non-Federal auditors of Federal organizations, programs, activities, and functions complies with these standards.[4]

Several State and local audit organizations have also officially adopted these standards, and in 1978 the Institute of Internal Auditors issued standards which were compatible with these.[5]

These standards, as originally issued, were reviewed by an AICPA committee. The committee's report stated:

> "The members of this Committee agree with the philosophy and objectives advocated by the GAO in its standards and believe that the GAO's broadened definition of auditing is a logical and worthwhile continuation of the evolution and growth of the auditing discipline."[6]

In 1977, AICPA's Management Advisory Services published guidelines for certified public accountant participation in government audit engagements.[7] The guidelines indicated that public accountants engaged to perform a government audit in accordance with GAO standards may be expected to do far more than in the past. The public accountant will be called upon to use not only his financial auditing and accounting skills, but a variety of other skills as well. Further, the standards had been written for government audit agencies as well as public accounting firms.

Scope

Our system of government today rests on an elaborate structure of interlocking relationships among all levels of government for managing public programs. Those officials and employees who manage the programs must render a full account of their activities to the public. While not always specified by law, this accountability is inherent in the governing processes of this Nation.

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[4] *See Public Law 95-452, Section 4(b), Oct. 12, 1978, Public Law 96-88, Section 508(n), Oct. 17, 1979, Public Law 96-226, Sections 201 and 202, Apr. 3, 1980, Public Law 96-465, Section 209(c), Oct. 17, 1980.*

[5] *"Standards for the Professional Practice of Internal Auditing," The Institute of Internal Auditors, Inc., copyright 1978.*

[6] *"Auditing Standards Established by the GAO—Their Meaning and Significance for CPAs, A Report," AICPA Committee on Relations with the General Accounting Office, New York, 1973, p. 12.*

[7] *"Guidelines for CPA Participation in Government Audit Engagements To Evaluate Economy, Efficiency, and Program Results," AICPA Management Advisory Services, Guideline Series No. 6, 1977.*

The requirement for accountability has caused a demand for more information about government programs. Public officials, legislators, and private citizens want and need to know not only whether government funds are handled properly and in compliance with laws and regulations, but also whether government organizations are achieving the purposes for which programs were authorized and funded and are doing so economically and efficiently.

These standards provide for an expanded scope of audit to help ensure full accountability and assist government officials and employees in carrying out their responsibilities.

The three elements of expanded scope auditing are:

1. *Financial and compliance*—determines (a) whether the financial statements of an audited entity present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles and (b) whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

2. *Economy and efficiency*—determines (a) whether the entity is managing and utilizing its resources (such as personnel, property, space) economically and efficiently, (b) the causes of inefficiencies or uneconomical practices, and (c) whether the entity has complied with laws and regulations concerning matters of economy and efficiency.

3. *Program results*—determines (a) whether the desired results or benefits established by the legislature or other authorizing body are being achieved and (b) whether the agency has considered alternatives that might yield desired results at a lower cost.

The audit standards are more than the mere codification of current practices, tailored to existing audit capabilities. They include concepts and areas of audit coverage which are still evolving and are vital to the accountability objectives sought in auditing governments and their programs.

An audit of a government entity may include all three elements or only one or two. It is not intended or even feasible or desirable that every audit include all three. The expanded scope audit should not be conducted routinely, but instead selected when it will meet the needs of expected users of the audit results.

The above expansion of the definition of "auditing" highlights the importance of a clear understanding of the audit scope by all interested parties. This takes on added importance when a public accountant is engaged to perform the audits. The

ngagement agreement between a government unit and the public accountant hould specify the scope of the work to be done as defined in the standards, to void misunderstandings.

A government auditor or public accountant may be called upon to perform ervices for purposes other than audit. For example, an auditor might be asked to gather information about a given program or an activity without reaching conclusions about performance or attesting to the information's reliability. The audit standards in this statement should be followed to the extent possible in performing these services. As a minimum, auditors should collectively possess adequate professional proficiency for the task required and exercise due professional care.

Although the first element of an expanded scope audit is called financial and compliance, the other two also include compliance items. These aspects of government auditing are discussed in chapter III.

Basic Premises

The following premises underlie these standards and were considered in their development.

1. The term "audit" is used to describe not only work done by accountants and auditors in examining financial statements but also work done in reviewing (a) compliance with applicable laws and regulations, (b) economy and efficiency of operations, and (c) effectiveness in achieving program results.

2. Public office carries with it the responsibility to apply resources efficiently, economically, and effectively to achieve the purposes for which the resources were furnished. This responsibility applies to all resources, whether entrusted to public officials by their own constituency or by other levels of government.

3. Public officials are accountable both to other levels of government for the resources provided to carry out government programs and to the public. Consequently they should provide appropriate reports to those to whom they are accountable. Unless legal restrictions, ethical considerations, or other valid reasons prevent them from doing so, audit organizations should make audit findings available to the public and to other levels of government that have supplied resources.

4. Financial and compliance auditing is an important part of the accountability process since it provides independent opinions on whether the entities' financial statements present fairly the results of financial operations. Economy and efficiency audits and program results audits can assist government operations by identifying needed improvements.

5. The interests of individual governments in many financially assisted programs often cannot be isolated because the resources applied have been commingled. Different levels of government share common interests in many programs. Therefore, an audit should to the extent practicable be designed to satisfy both the common and discrete accountability interests of each contributing government.

6. Cooperation by Federal, State, and local governments in auditing programs of common interest with a minimum of duplication benefits all concerned and is a practical method of auditing intergovernmental operations.

7. Auditors should rely upon the work of other auditors to the extent feasible if they satisfy themselves as to the other auditors' independence, capability, and performance by appropriate tests of their work or by other acceptable methods.[8]

An assumption underlying all the standards is that governments will cooperate in making audits in which they have mutual interests. This is especially true when one government receives funds from several others and each has a continuing need for a basic financial and compliance audit. In these circumstances, audits should be made on an organizationwide basis whenever possible, rather than on a grant-by-grant basis, and in a manner that will satisfy the audit needs of the participating governments.[9]

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[8] *Quality assessment guidelines for audit organizations have been developed by the AICPA (Statement 1 on Quality Control Standards). Also, the intergovernmental audit forums have developed similar guidelines for audit organizations.*

[9] *See footnote 1, on page 1*

The standards are summarized below and are explained and discussed in detail in chapters III through VII.

A. Scope of Audit Work

The expanded scope of auditing a government organization, a program, an activity, or a function should include:

1. *Financial and compliance*—determines (a) whether the financial statements of an audited entity present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles and (b) whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

2. *Economy and efficiency*—determines (a) whether the entity is managing and utilizing its resources (such as personnel, property, space) economically and efficiently, (b) the causes of inefficiencies or uneconomical practices, and (c) whether the entity has complied with laws and regulations concerning matters of economy and efficiency.

3. *Program results*—determines (a) whether the desired results or benefits established by the legislature or other authorizing body are being achieved and (b) whether the agency has considered alternatives that might yield desired results at a lower cost.

In determining the scope for a particular audit, responsible audit and entity officials should consider the needs of the potential users of audit findings.

B. General Standards

1. Qualifications: The auditors assigned to perform the audit must collectively possess adequate professional proficiency for the tasks required.

2. Independence: In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, must be free from personal or external impairments to independence, must be organizationally independent, and shall maintain an independent attitude and appearance.

3. Due professional care: Due professional care is to be used in conducting the audit and in preparing related reports.

4. Scope impairments: When factors external to the audit organization and the auditor restrict the audit or interfere with the auditor's ability to form objective opinions and conclusions, the auditor should attempt to remove the limitation or, failing that, report the limitation.

C. Examination and Evaluation (Field Work) and Reporting Standards for Financial and Compliance Audits

1. AICPA Statements on Auditing Standards for field work and reporting are adopted and incorporated in this statement for government financial and compliance audits. Future statements should be adopted and incorporated, unless GAO excludes them by formal announcement.

2. Additional standards and requirements for government financial and compliance audits.

   a. Standards on examination and evaluation:

      (1) Planning shall include consideration of the requirements of all levels of government.

      (2) A review is to be made of compliance with applicable laws and regulations.

      (3) A written record of the auditors' work shall be retained in the form of working papers.

      (4) Auditors shall be alert to situations or transactions that could be indicative of fraud, abuse, and illegal expenditures and acts and if such evidence exists, extend audit steps and procedures to identify the effect on the entity's financial statements.

   b. Standards on reporting:

      (1) Written audit reports are to be submitted to the appropriate officials of the organization audited and to the appropriate officials of the organizations requiring or arranging for the audits unless legal restrictions or ethical considerations prevent it. Copies of the reports should also be sent to other officials who may be responsible for taking action and to others authorized to receive such reports. Unless restricted by law or regulation, copies should be made available for public inspection.

(2) A statement in the auditors' report that the examination was made in accordance with generally accepted government auditing standards for financial and compliance audits will be acceptable language to indicate that the audit was made in accordance with these standards. (See ch. V, par. 2b(1)(c) AICPA-suggested language.)

(3) Either the auditors' report on the entity's financial statements or a separate report shall contain a statement of positive assurance on those items of compliance tested and negative assurance on those items not tested. It shall also include material instances of noncompliance and instances or indications of fraud, abuse, or illegal acts found during or in connection with the audit.

(4) The auditors shall report on their study and evaluation of internal accounting controls made as part of the financial and compliance audit. They shall identify as a minimum: (a) the entity's significant internal accounting controls, (b) the controls identified that were evaluated, (c) the controls identified that were not evaluated (the auditor may satisfy this requirement by identifying any significant classes of transactions and related assets not included in the study and evaluation), and (d) the material weaknesses identified as a result of the evaluation.

(5) Either the auditors' report on the entity's financial statements or a separate report shall contain any other material deficiency findings identified during the audit not covered in (3) above.

(6) If certain information is prohibited from general disclosure, the report shall state the nature of the information omitted and the requirement that makes the omission necessary.

D. Examination and Evaluation Standards For Economy and Efficiency Audits and Program Results Audits

1. Work is to be adequately planned.

2. Assistants are to be properly supervised.

3. A review is to be made of compliance with applicable laws and regulations.

4. During the audit a study and evaluation shall be made of the internal control system (administrative controls) applicable to the organization, program, activity, or function under audit.

5. When audits involve computer-based systems, the auditors shall:

   a. Review general controls in data processing systems to determine whether (1) the controls have been designed according to management direction and known legal requirements and (2) the controls are operating effectively to provide reliability of, and security over, the data being processed.

   b. Review application controls of installed data processing applications upon which the auditor is relying to assess their reliability in processing data in a timely, accurate, and complete manner.

6. Sufficient, competent, and relevant evidence is to be obtained to afford a reasonable basis for the auditors' judgments and conclusions regarding the organization, program, activity, or function under audit. A written record of the auditors' work shall be retained in the form of working papers.

7. The auditors shall:

   a. Be alert to situations or transactions that could be indicative of fraud, abuse, and illegal acts.

   b. If such evidence exists, extend audit steps and procedures to identify the effect on the entity's operations and programs.

E. Reporting Standards For Economy and Efficiency Audits and Program Results Audits

1. Written audit reports are to be prepared giving the results of each government audit.

2. Written audit reports are to be submitted to the appropriate officials of the organization audited and to the appropriate officials of the organizations requiring or arranging for the audits unless legal restrictions or ethical considerations prevent it. Copies of the reports should also be sent to other officials who may be responsible for taking action on audit findings and recommendations and to others authorized to receive such reports. Unless restricted by law or regulation, copies should be made available for public inspection.

3. Reports are to be issued on or before the dates specified by law, regulation, or other special arrangement. Reports are to be issued promptly so as to make the information available for timely use by management and by legislative officials.

4. The report shall include:

   a. A description of the scope and objectives of the audit.

   b. A statement that the audit (economy and efficiency or program results) was made in accordance with generally accepted government auditing standards.

   c. A description of material weaknesses found in the internal control system (administrative controls).

   d. A statement of positive assurance on those items of compliance tested and negative assurance on those items not tested. This should include significant instances of noncompliance and instances of or indications of fraud, abuse, or illegal acts found during or in connection with the audit. However, fraud, abuse, or illegal acts normally should be covered in a separate report, thus permitting the overall report to be released to the public.

   e. Recommendations for actions to improve problem areas noted in the audit and to improve operations. The underlying causes of problems reported should be included to assist in implementing corrective actions.

   f. Pertinent views of responsible officials of the organization, program, activity, or function audited concerning the auditors' findings, conclusions, and recommendations. When possible their views should be obtained in writing.

   g. A description of noteworthy accomplishments, particularly when management improvements in one area may be applicable elsewhere.

   h. A listing of any issues and questions needing further study and consideration.

   i. A statement as to whether any pertinent information has been omitted because it is deemed privileged or confidential. The nature of such information should be described, and the law or other basis under which it is withheld should be stated. If a separate report was issued containing this information it should be indicated in the report.

5. The report shall:

   a. Present factual data accurately and fairly. Include only information, findings, and conclusions that are adequately supported by sufficient evidence in the auditors' working papers to demonstrate or prove the bases for the matters reported and their correctness and reasonableness.

   b. Present findings and conclusions in a convincing manner.

   c. Be objective.

   d. Be written in language as clear and simple as the subject matter permits.

   e. Be concise but, at the same time, clear enough to be understood by users.

   f. Present factual data completely to fully inform the users.

   g. Place primary emphasis on improvement rather than on criticism of the past; critical comments should be presented in a balanced perspective considering any unusual difficulties or circumstances faced by the operating officials concerned.

The scope of audit work standard for government auditing is:

- **Expanded scope auditing of government organizations, programs, activities, and functions should encompass the following elements:**[1]

1. *Financial and compliance*—**determines (a) whether the financial statements of an audited entity present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles and (b) whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.**

2. *Economy and efficiency*—**determines (a) whether the entity is managing and utilizing its resources (such as personnel, property, space) economically and efficiently, (b) the causes of inefficiencies or uneconomical practices, and (c) whether the entity has complied with laws and regulations concerning matters of economy and efficiency.**

3. *Program results*—**determines (a) whether the desired results or benefits established by the legislature or other authorizing body are being achieved and (b) whether the agency has considered alternatives that might yield desired results at a lower cost.**

This standard places on audit officials or entity officials, who authorize and prescribe the scopes of government audits, the responsibility for providing for audit work that is broad enough to fulfill the needs of all potential users of the audit findings. Not every audit requires all three elements to be performed. In some instances, the financial and related financial compliance aspects may be the only concern, in others, economy and efficiency or program results elements may be covered. Thus the standards apply to each element and are therefore equally applicable to audits of fewer than all three elements.[2] However, those contracting for such audits should be advised that the needs of government may not be fully met unless audits within each of the three elements are performed over a period of time.[3] The audit report should clearly identify the elements covered.

While the first element includes an evaluation of compliance with laws and regulations, compliance auditing also applies to economy and efficiency and program results audits.

The nature and purpose of the review of compliance with laws and regulations varies with the audit element being performed.

Financial and compliance—The auditor shall determine whether there is compliance with laws and regulations that could materially affect the entity's financial statements.

Economy and efficiency—The auditor shall determine whether there is compliance with laws and regulations that could significantly affect the acquisition, management, and utilization of the entity's resources.

Program results—The auditor shall determine whether programs are being carried out in conformity with laws and regulations.

In government audits the compliance aspect takes on an added significance because there are more compliance requirements to check. Therefore, it is important in planning audit coverage that the compliance requirements to be included are determined prior to the start of the audit. This is especially true in financial audits since the entity's financial position and statements could be affected. See chapter V for further discussion.

The general objectives of expanded scope auditing are:

1. *Financial and compliance.* An examination shall include sufficient work to determine whether:

   a. The financial statements present fairly the financial position and the results of financial operations.

   b. The entity is complying with laws and regulations which if not followed could materially affect its financial statements.

One problem which adds confusion to government auditing is the lack of standard terminology, especially concerning the types of audits. For example, the last two elements of "expanded scope auditing," as described in this statement, are referred to by several other terms, such as "effectiveness auditing," "management auditing," "operational auditing," "performance auditing," and "compliance auditing." The terms used in this statement should be used in audit reports to avoid misunderstanding.

[2] Auditors also conduct audits that cannot be clearly classified under only one of the three elements. For example, auditors conduct audits of government contracts and grants with private as well as government and nonprofit organizations. These commonly referred to as "contract audits," or "comprehensive grant audits" may include some aspects of financial and compliance audits as well as economy and efficiency audits. Accordingly, these standards should be followed. A government auditor or a public accountant may also be hired upon to provide services other than audit to a government. For example, the auditor might be engaged simply to gather information and data without identifying condition, criteria, cause, and effect (basic finding attributes—see ch. VII, footnote 1) about a given activity or program to help management carry out its duties. The standards in this statement should be followed to the extent possible in performing such services. As a minimum, auditors should collectively possess adequate professional proficiency for the task required and exercise due professional care.

[3] A period of time (normal audit cycle) is defined by the audit organization (1-year, 2 year, etc.

2. *Economy and efficiency*. The auditor may, where appropriate, consider whether the entity:

   a. Is following sound procurement practices.

   b. Is following proper procedures to ensure that the needed type, quality, and amount of items are available and are properly used and maintained.

   c. Avoids duplication of effort by employees.

   d. Avoids work that serves little or no purpose.

   e. Avoids overstaffing.

   f. Uses efficient operating procedures

Because "economy" and "efficiency" are both relative terms, it is not possible for an auditor to express an opinion on whether an entity has reached the maximum practicable level of either. Therefore these standards do not contemplate that the auditor will be called upon to give an opinion on this. Rather, the auditor should report findings and conclusions on specific processes, methods, or activities that can be made more efficient or economical and should recommend improvements.

3. *Program results*. The auditor should:

   a. Assess the adequacy of management's system for measuring effectiveness.

   b. Determine the extent to which a program achieves a desired level of program results.

   c. Identify factors inhibiting satisfactory performance.

Although it is the entity management's continuing responsibility to assess program results, government program objectives and measurement criteria are not always clearly defined. Until this is done, however, a program results review cannot be meaningful. If this has not been done before starting a program results review, the auditor should work with the entity to (1) state the objectives, (2) establish measurement criteria, and (3) establish methods for accumulating the data necessary to measure achievement of program results.

When the program objectives and measurement criteria are defined, the auditor should consider:

- The relevance and validity of the criteria used by the entity to measure achievement of program results.
- The appropriateness of the entity's methods for evaluating achievement of program results.
- The reliability of the data accumulated.
- The reliability of the results obtained.

A program results review may involve several different sites and different auditors at each site. In these cases the work should be coordinated and the review techniques should be uniform. To do otherwise would be uneconomical and might lead to wide variations in the measurements of similar projects by different auditors.

Auditors are not required to express an opinion on the effectiveness of a program. However, the auditors should state their conclusions about the effectiveness of the program. They should also describe the effectiveness measurement system, performance indicators, performance standards, data sources, and data collection techniques used in the final report along with recommendations.

A. Qualifications

The first general standard for government auditing is

- **The auditors assigned to perform the audit must collectively possess adequate professional proficiency for the tasks required.**

This standard places upon the audit organization and the auditor the responsibility for ensuring that the audit is conducted by personnel who collectively have the skills necessary for the type of audit to be done.

However, this standard recognizes that those possessing special skill in a particular field other than accounting and auditing cannot meet the requirements of the auditing standards without proper audit training. This should include both formal classroom training and on the job training.

Audits vary in purpose and scope. Some require opinions on financial statements, others require reviews of efficiency and economy or effectiveness in achieving program results, still others require more than one of these three elements. Meeting these requirements calls for a wide variety of skills.

The qualifications mentioned herein should apply to the skills of the audit organization as a whole and not necessarily to individual auditors. If an organization possesses personnel, or hires outside consultants, with acceptable skills in such areas as accounting, statistics, law, engineering, and actuarial science, each individual member need not possess all these skills.

Qualifications for staffs performing government audits are as follows:

1. A knowledge of accounting and auditing theory and procedures and the education, ability, and experience to apply such knowledge to the type of audit being done.

2. A knowledge of government organizations, programs, activities, and functions which may be acquired by education, study, or experience.

3. The skills necessary for the audit.

   a. For financial audits which lead to an opinion on financial statements:

      - The government auditor must be proficient in accounting and auditing.
      - When public accountants are to perform the audits, only certified public accountants or public accountants licensed on or before December 31, 1970, or persons working for a certified public accounting firm or a public accounting firm licensed on or before December 31, 1970, should be engaged.[1]

   b. The skills of the auditor or staff must also be appropriate for all types of audit work. For instance:

      - If the work requires use of statistical sampling techniques, the staff or consultants to the staff must include persons with statistical sampling skills.
      - If the work requires extensive review of computerized systems, the staff or consultants to the staff must include persons with computer audit skills.
      - If the work involves review of complex engineering data, the staff or consultants to the staff must include persons with engineering skills.

Auditors and audit organizations are responsible for maintaining technical competence through continuing education.

B. Independence

The second general standard for government auditing is:

- **In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, must be free from personal or external impairments to independence, must be organizationally independent, and shall maintain an independent attitude and appearance.**

This standard places upon auditors and audit organizations the responsibility for maintaining independence so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties.

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[1] *Letter (B-148144, May 28, 1975) from the Comptroller General to Senator Abraham A. Ribicoff and letter (B-148144, June 30, 1976) from the Comptroller General to heads of Federal agencies. It is GAO's position that auditors need the highest type of skills to audit and render opinions on financial statements. Uniform criteria are required to ensure that those who render such opinions possess the necessary skills.*

Auditors should consider not only whether they are independent and their own attitudes and beliefs permit them to be independent but also whether there is anything about their situation that might lead others to question their independence. All situations deserve consideration since it is important not only that auditors be, in fact, independent and impartial but also that knowledgeable third parties consider them so.

Public accountants will be considered independent if they are independent under the AICPA Code of Professional Ethics.

Auditors need to consider three general classes of impairments to independence: personal, external, and organizational. If one or more of these affect their ability to do their work and report their findings impartially, they should decline to perform the audit. If the auditors are employees of the audited entity, they should state that in a prominent place in the audit report.

Personal Impairments

There are circumstances in which auditors cannot be impartial because of their view or personal situation. While these impairments apply to individual auditors, they may also apply to the audit organization. These circumstances include, but are not limited to, the following:

1. Official, professional, personal, or financial relationships that might cause the auditor to limit the extent of the inquiry, to limit disclosure, or to weaken audit findings in any way.

2. Preconceived ideas toward individuals, groups, organizations, or objectives of a particular program that could bias the audit.

3. Previous involvement in a decisionmaking or management capacity that would affect current operations of the entity or program being audited.

4. Biases, including those induced by political or social convictions, that result from employment in, or loyalty to, a particular group, organization, or level of government.

5. Subsequent performance of an audit by the same individual who, for example, had previously approved invoices, payrolls, claims, and other proposed payments.

6. Subsequent performance of an audit by the same individual who maintained the official accounting records.[2]

7. Financial interest, direct or substantial indirect, in the audited entity or program.

External Impairments

Factors external to the audit organization can restrict the audit or interfere with an auditor's ability to form independent and objective opinions and conclusions. For example, under the following conditions an audit will be adversely affected and the auditor will not have complete freedom to make an independent and objective judgment:

1. Interference in the assignment of audit personnel.

2. Restrictions on funds or other resources dedicated to the audit organization.

3. Authority to overrule or to influence the auditor's judgment as to the appropriate content of an audit report or selection of what is to be audited.

4. Influences that jeopardize the auditor's continued employment for reasons other than competency or the need for audit services.

Organizational Impairments

Auditors' independence can be affected by their place within the structure of the government entity to which they are assigned and also by whether they are auditing internally or auditing other entities.

Internal auditors

A Federal, State, or local government auditor may be subject to policy direction from persons involved in the government management process. To help achieve maximum independence, the audit function or organization should report to the head or deputy head of the government entity and should be organizationally located outside the staff or line management function of the unit under audit.

[2] *For example, an individual performs a substantial part of the accounting process or cycle, such as analyzing, journalizing, posting, preparing adjusting and closing entries, and preparing the financial statements, and later performs an audit. There may be instances when the auditor acts as the main processing center for recording transactions initiated by the auditee and the auditee acknowledges responsibility for the financial records and financial statements, however, in these instances the independence of the auditor is not necessarily impaired.*

Auditors should also be sufficiently removed from political pressures to ensure that they can conduct their audits objectively and can report conclusions objectively without fear of censure. Whenever feasible, they should be under a personnel system where compensation, training, job tenure, and advancement are based solely on merit.

If the above conditions are met, and there are no personal or external impairments, the audit staff should be organizationally independent to audit internally and free to report objectively to top management. The main objective of an internal audit staff is to serve the entity. Therefore, internal auditors may not be considered independent of the entity by third parties while auditing within their organization.[3] While the internal auditor may not be considered independent, the external auditor, in auditing the entity, should use the internal auditor's work to the extent feasible after appropriate tests are performed.[4]

When organizationally independent internal auditors perform audits external to the government entity to which they are assigned, they may be considered independent of the audited entity and should be free to objectively report the findings.

External auditors

Government auditors who are elected and legislative auditors auditing executive entities usually are free of organizational impairments when auditing outside the government entity to which they are assigned.

Government auditors may be presumed to be independent of the audited entity, assuming there are no personal or external impairments, if the entity is:

1. A level of government other than the one to which they are assigned (Federal, State, or local).

2. A different branch of government within the level of government to which they are assigned (legislative, executive, or judicial).

An exception might be the new inspectors general within the Federal Government. The inspectors general, by statute, have certain reporting responsibilities to the Congress, including reporting the results of in-house audits. This removes some of the organizational impairments. A parallel example would be a local auditor who, although an employee of the local government, reports to both the legislative board or council and the top local official.

[4] See AICPA's "The Effect of an Internal Audit Function on the Scope of an Independent Auditor's Examination," SAS No. 9.

Government auditors may also be presumed to be independent assuming there are no personal or external impairments if they are:

1. Elected by the citizens of their jurisdiction.

2. Elected or appointed by and reporting to the legislative body of the level of government to which they are assigned.

3. Appointed by the chief executive and confirmed by and reporting to the legislative body of the level of government to which they are assigned.

C. Due Professional Care

The third general standard for government auditing is:

- **Due professional care is to be used in conducting the audit and in preparing related reports.**

This standard places upon the auditor and the audit organization the responsibility for employing professional standards in auditing government organizations, programs, activities, and functions.

This standard does not imply unlimited responsibility for disclosure of irregularities or noncompliance; neither does it imply infallibility on the part of either the audit organization or the individual auditor. The standard does require professional performance of a quality appropriate for the audit assignment undertaken.

The standard requires the auditor to be alert for situations or transactions that could be indicative of fraud, abuse, or illegal expenditures or acts, inefficiencies, or ineffectiveness. The standard does not, however, require that the auditor give absolute assurance that no impropriety exists; nor does it require that all transactions be audited in detail.

Auditing is not a substitute for an internal control system. Management is responsible for instituting adequate procedures and controls to provide reasonable assurance against irregularities and improprieties and encouraging adherence to adopted policies and prescribed requirements.

Exercising due professional care means using good judgment in choosing tests and procedures and in preparing reports. As a minimum the choice of tests and procedures requires consideration of:

1. What is necessary to achieve the audit objectives.

2. Materiality of matters to which the test procedures will be applied.

3. Effectiveness of internal controls.

4. Cost versus benefits of the audit work being done.

The quality of audit work and related reports depends upon the degree to which:

1. Tests and procedures are properly designed to meet planned objectives and are performed by competent persons.

2. Findings and conclusions are based on an objective evaluation of all pertinent facts.

3. Facts and conclusions in reports are fully supported by information obtained or developed during the audit.

4. The audit process conforms with the examination and evaluation standards and the reporting standards in chapters V, VI, and VII, respectively.

5. A review is performed at every level of supervision of the work done and of the judgment exercised by those assisting in the examination.

Due professional care also includes obtaining a mutual understanding of the audit scope and objectives with the audited entity as well as those who authorized the audit. It also includes obtaining a good working understanding of the operations to be audited and available performance measurement criteria (including laws and regulations). When the criteria are vague, the auditors should seek interpretation. If interpretation is not available, auditors should strive to agree on the appropriateness of these measures with the interested parties, or indicate that they were unable to report upon performance because of the lack of definitive criteria.

Due professional care also includes followup on findings from previous audits to determine whether appropriate corrective actions have been taken.

D. Scope Impairments

When factors external to the audit organization and the auditor restrict the audit or interfere with the auditor's ability to form objective opinions and conclusions, the auditor should attempt to remove the limitation or, failing that, report the limitation. For example, under the following conditions an audit will be adversely affected and the auditor will not have complete freedom to make an objective judgment:

1. Interference or influence that improperly or imprudently limits or modifies the scope or type of an audit.

2. Interference with the selection or application of audit procedures or the selection of transactions to be examined.

3. Denial of access to sources of information, such as books, records, and supporting documents, or denial of opportunity to obtain explanations by officials and employees of the organization, program, or activity under audit.

4. Unreasonable restrictions on the time allowed to competently complete an audit.

Examination and Evaluation (Field Work) and Reporting Standards For Financial and Compliance Audits

CHAPTER V

The standards for examination and evaluation (field work) and reporting for government financial and compliance audits include the AICPA auditing standards. However, to satisfy the unique needs of government, additional standards and requirements are added to the AICPA standards.

A. AICPA Statements on Auditing Standards

AICPA Statements on Auditing Standards for field work and reporting are adopted and incorporated in this statement for government financial and compliance audits. These standards are set forth in AICPA's "Codification of Statements on Auditing Standards," issued in 1981. Future statements should be adopted and incorporated unless GAO excludes them by formal announcement.

B. Additional Standards and Requirements

To satisfy the unique needs of government, additional standards and requirements are added to the AICPA standards. These are discussed below.

1. Standards on Examination and Evaluation (Field Work)

The following areas under examination and evaluation need additional attention in government financial and compliance audits.

a. Planning

- **Planning shall include consideration of the requirements of all levels of government.**

In many instances, audits of the same organizations, programs, activities, or functions may be required by Federal, State, and local laws, regulations, and ordinances.

When this situation exists, the auditor should ascertain what governments are to be served by the audit, and to the maximum extent practicable, plan the audit so that it will fulfill the needs of all potential government users.

In government, there is a stewardship responsibility that goes beyond the level of the effect upon the financial statements as a whole. The auditor should consider this fact in planning the audit.

b. Legal and Regulatory Requirements

- **A review is to be made of compliance with applicable laws and regulations.**

In government auditing, compliance with laws and regulations is significant because government organizations, programs, activities, and functions are usually created by law and have more specific rules and regulations than do private organizations.

This standard places upon the auditors the responsibility for determining whether the audited entity has complied with the laws and regulations. Auditors should consult with legal counsel when questions arise concerning the interpretation of laws and regulations. In financial and compliance auditing, the auditors are to test the financial transactions of the audited organization, program, activity, or function to determine whether there is compliance with laws and regulations that can materially affect the entity's financial statements. Specifically, the auditors are to satisfy themselves that the entity has not incurred significant unrecorded liabilities (contingent or actual) through failure to comply with, or through violation of, laws and regulations.

Also, in government audits, more indepth transaction testing may be required than in commercial audits, to provide reasonable assurance of compliance with laws and regulations. For example, when transactions selected for testing include grant transactions, the auditors should determine whether costs were charged to the proper grant and allocated equitably among grants and other benefiting activities.

c. Working Papers

- **A written record of the auditors' work shall be retained in the form of working papers.**

Working papers are the link between field work and the auditors' report. They serve as a record of the results of the examination and the bases of the auditors' opinions. Procedures should be adopted to ensure the safe custody and retention of working papers for a time sufficient to satisfy legal and administrative requirements.

One premise underlying the audit planning is that Federal, State, and local governments cooperate in auditing programs of common interest so that auditors may use each other's work and avoid duplicate efforts. Auditors should rely on other auditors' work to the extent feasible once they satisfy themselves as to the

other auditors' capabilities, independence, and performance by appropriate tests of the work or by other acceptable methods.[1]

To do this, the auditors generally must have access to the working papers of the other auditors. For working papers containing restricted information, the pertinent regulations should be followed.

Arrangements should be made to ensure that working papers will be made available upon request to other government audit staffs and individual auditors whose work follows theirs. All contractual arrangements for government audits should provide for access to working papers.

As a general guideline, working papers should:

(1) Contain the results and scope of the examination.

(2) Not require detailed, supplementary, oral explanations.

(3) Be legible.

(4) Restrict information included to matters that are materially important and relevant to the objectives of the examination.

d. Fraud, Abuse, and Illegal Acts

- **Auditors shall be alert to situations or transactions that could be indicative of fraud, abuse, and illegal expenditures and acts and if such evidence exists, extend audit steps and procedures to identify the effect on the entity's financial statements.**

Normal audit tests and procedures may uncover indications of such acts. The auditors shall extend audit steps and procedures if the examination indicates that fraud, abuse, or illegal acts may have occurred. The extended audit steps should be directed to obtaining sufficient evidence to determine whether in fact they have occurred and, if so, the possible effect on the entity's financial statements. Auditors should not release reports containing information on such acts until they consult with legal counsel.

An audit made in accordance with the standards in this statement will not guarantee the discovery of all fraud, abuse, or illegal acts that might have been

[1] *Quality assessment guidelines for audit organizations have been developed by the AICPA (Statement 1 on Quality Control Standards). See also SAS No. 1, section 543, and SAS No. 9. Also, the intergovernmental audit forums have developed similar guidelines for audit organizations.*

committed. Nor does the subsequent discovery of fraud, abuse, or illegal acts committed during the audit period necessarily mean that the auditors' performance was inadequate. If the audit was made in accordance with these standards, the auditors have fulfilled their professional responsibility.

2. Standards on Reporting

The following additional requirements in the reporting area exist for government financial and compliance audits:

a. Distribution

- **Written audit reports are to be submitted to the appropriate officials of the organization audited and to the appropriate officials of the organizations requiring or arranging for the audits unless legal restrictions or ethical considerations prevent it. Copies of the reports should also be sent to other officials who may be responsible for taking action and to others authorized to receive such reports. Unless restricted by law or regulation, copies should be made available for public inspection.**

Audit reports should be distributed to as many interested officials as is practicable. In some cases, the subject of the audit may involve material that is classified for security purposes or is not releasable for other valid reasons. Generally, however, the report should be distributed to officials directly interested in the findings. Such officials include those designated by law or regulation to receive such reports, those responsible for taking action, legislators, and those of other levels of government that have provided funds to the audited entity. Also, unless restricted by law or regulation, copies should be available for distribution to or for inspection by the public.

When public accountants are engaged, the engaging organization must ensure that appropriate distribution is made. If the public accountants are to make the distribution, the engagement agreement should indicate what officials or organizations shall receive the report.

Internal auditors should follow their entity's own arrangements. Usually, they report to their entity's top management and the entity is responsible for distribution of the report.

b. Statement on Auditing Standards Followed in the Audit

- **A statement in the auditors' report that the examination was made in**

accordance with generally accepted government auditing standards for financial and compliance audits will be acceptable language to indicate that the audit was made in accordance with these standards.[2] (The AICPA requires that public accountants state that the examination was made in accordance with generally accepted auditing standards. They should also state that their examination was performed in accordance with those additional standards and requirements set forth in this chapter.)

c. Statement on Compliance and Fraud, Abuse, or Illegal Acts

- **Either the auditors' report on the entity's financial statements or a separate report shall contain a statement of positive assurance on those items of compliance tested and negative assurance on those items not tested. It shall also include material instances of noncompliance and instances or indications of fraud, abuse, or illegal acts found during or in connection with the audit.**

Positive and Negative Assurances

Positive assurance consists of a statement by the auditors that the tested items were in compliance with applicable laws and regulations. Negative assurance is a statement that nothing came to the auditors' attention as a result of specified procedures that caused them to believe the untested items were not in compliance with applicable laws and regulations.

Compliance Statement

Material instances of noncompliance should be reported. Minor procedural noncompliance that is not illegal need not be disclosed.

In reporting noncompliance, the auditors should place their findings in proper perspective. The extent of noncompliance should be related to the number of cases examined to give the reader a basis for judging the prevalence of noncompliance. In presenting the findings, the auditor should follow chapter VII, sections D and E of this statement.

Fraud, Abuse, and Illegal Acts

If, during or in connection with an audit of a government entity, external

[2] *The audit standards set forth in this publication, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions."*

government auditors become aware of fraud, abuse, or illegal acts or indications of such acts affecting the government entity, they should promptly notify the top official of that entity (unless the official is believed to be a party to such acts or otherwise implicated) and the appropriate law enforcement authorities. If the acts involve funds received from other government entities, auditors should also promptly notify officials of those entities.

Public accountants performing government audits will discharge their responsibility by promptly notifying the entity arranging for the audit. Internal government auditors should notify the top official of the entity under audit. It will be the responsibility of the entity receiving the information to notify appropriate law enforcement authorities and other government entities whose funds may be involved.

In the case of an audit of government funds received by a nongovernment entity, the auditors should promptly notify the appropriate entity arranging for the audit.

All fraud, abuse, or illegal acts or indications of such acts, whether material or not, that auditors become aware of should normally be covered in a separate written report and submitted in accordance with the preceding paragraphs, thus permitting the overall report to be released to the public. However, auditors should not release to the public reports containing information on such acts, or reports with references that such acts were omitted from reports, without consulting with legal counsel, since this could interfere with legal processes or subject the implicated individuals to undue publicity.

d. Statement on Internal Accounting Control

- **The auditors shall report on their study and evaluation of internal accounting controls made as part of the financial and compliance audit.[3] They shall identify as a minimum: (1) the entity's significant internal accounting controls, (2) the controls identified that were evaluated, (3) the controls identified that were not evaluated (the auditor may satisfy this requirement by identifying any significant classes of transactions and related assets not included in the study and evaluation), and (4) the material weaknesses identified as a result of the evaluation.**

[3] *This standard does not require any additional audit effort other than that required as part of a normal financial and compliance audit described in this statement.*

Both AICPA standards and generally accepted government auditing standards specify the need for a proper study and evaluation of internal accounting control as a part of the audit. The study and evaluation establishes a basis for determining the extent to which auditing procedures are to be restricted, and it is an intermediate step in forming an opinion on the financial statements.

AICPA SAS No. 1, section 320, gives guidance on the auditor's study and evaluation of internal accounting control. Also, AICPA SAS Nos. 20 and 30 give guidance on reporting on internal accounting control. Paragraph 49 of SAS No. 30 gives an example of a report on internal accounting control. However, the additional requirements stated in the above standard must be included in the report.

There are a number of reasons why a study and evaluation of internal accounting control may not be made. They include:

(1) The entity is so small that it is not feasible to have an adequate internal control system.

(2) The auditor may conclude that the audit can be performed more efficiently by expanding substantive audit tests, thus placing very little reliance on the internal control system.

(3) The existing internal control system may contain so many weaknesses that the auditor has no choice but to rely on substantive testing, thus virtually ignoring the internal control system.

The above circumstances may justify not making a study and evaluation of internal accounting controls. However, the auditors must describe in their report why a study was not made.

e. Other Reporting

- **Either the auditors' report on the entity's financial statements or a separate report shall contain any other material deficiency findings identified during the audit not covered in subparagraph c above.**

In presenting the findings, the auditors should follow the procedures identified in the reporting standards discussed in chapter VII, sections D and E of this statement.

f. Privileged and Confidential Information

- **If certain information is prohibited from general disclosure, the report shall state the nature of the information omitted and the requirement that makes the omission necessary.**

Certain financial information may be prohibited from general disclosure by Federal, State, or local laws or regulations. Such information may be provided on a need-to-know basis only to persons authorized by law or regulation to have it.

If the auditors are prohibited by such requirements from including pertinent data in the report, they should state the nature of the information omitted (for example, "indications of illegal acts"—however, see last paragraph of subsection 2c above) and the requirement that makes the omission necessary. The auditor should obtain assurance that a valid requirement for the omission exists.

Examination and Evaluation Standards For Economy and Efficiency Audits and Program Results Audits

CHAPTER VI

A. Planning

The first examination and evaluation standard for government economy and efficiency audits and program results audits is:

- **Work is to be adequately planned.**

Planning is important to ensure that the audit results will satisfy the objectives of the audit. Adequate planning is especially important in reviews of economy and efficiency or program results, because the procedures employed in such audits are varied and complex.

This standard places upon the auditor or audit organization the responsibility for thoroughly planning an effective audit. This should include planning how the audit objectives can be attained while establishing a balance between audit scope, time frames, and staff-days to be spent to ensure optimum use of audit resources. The auditor should see that necessary or desired auditing procedures are systematically laid out so that they can be understood by the assigned audit staff.

Planning is extremely important in intergovernmental auditing because, in many instances, the audit work performed at one level of government should be correlated with work done at the same level or different levels. All or some may have an interest in, or a statutory requirement to review, the discharge of financial, management, or program accountability of a single organization, program, activity, or function. When such coordination is necessary, planning must be done by some central audit agency which will establish the audit objectives and scope so that the participatory audits done at individual sites will be comparable and the results can be consolidated.

Adequate planning should include consideration of:

1. Coordination with other government auditors, when appropriate, including work already done and other work that may be intended in the future.
2. Personnel to be used on the assignment.
3. Work to be done.
4. The format and general content of the report to be issued.

Coordination

In government auditing, a central audit agency, such as a Federal or State audit organization, may be responsible for audits involving work at several different locations by its field office staff. The central agency must carefully plan these audits to ensure that they will be done effectively and efficiently.

Planning for such audits must be tailored to the specific audit objectives. Ordinarily the central audit agency should specify the compliance requirements to be considered by the auditor, the aspects of economy and efficiency to be included in the audit, and the program goals and objectives and measurement criteria to be used in reviewing program results. Unless such planning is carefully done and communicated to the participating staffs, the audit results may not meet the needs and expectations of the central audit agency. Unplanned audit effort will make it difficult to compare and consolidate the findings from various locations.

Furthermore, a coordinated audit can be planned more efficiently and economically at the central audit agency level. For example, researching the program laws and regulations and establishing clear and concise audit objectives are time consuming. To have each participating staff do this would create excessive duplication and cost. Some audits require even closer coordination because a given event may be audited at more than one location by different staffs. The preparation of detailed audit programs for such audits is an integral part of the standard for planning.

Multiple-Use Audits

In many instances, audits of the same organizations, programs, activities, or functions may be required by Federal, State, and local laws, regulations, and ordinances. Whenever practicable, a single audit should be made that includes the requirements of all levels of government.

Personnel

Staff planning should include:

1. Assigning qualified staff having education and experience commensurate with the work to be done.
2. Assigning enough experienced staff and supervisors to the audit. Consultants should be hired when necessary.

3. Providing on-the-job training for inexperienced staff.

Work To Be Performed

A written audit program should be prepared for each audit and is essential to conducting audits efficiently and effectively. An audit program provides:

1. A systematic series of audit procedures which can be communicated to the assigned staff members.

2. A systematic basis for assigning work to supervisors and assistants.

3. The basis for a summary record of work done.

However, a written audit program should never be used merely as a checklist of steps to be performed. Effective work on economy and efficiency audits and program results audits requires that the staff understand the objectives of the audit and use their own initiative in determining the appropriateness of steps in the audit program and in assessing the results of the work performed.

The information needed by the auditor to prepare an audit program varies with the type of audit (economy and efficiency or program results) and the entity to be audited. In many instances, a survey of the entity should be made before preparing the audit program. This is especially important when conducting expanded scope audits which include evaluation of program results. The audit survey is an effective method to help identify specific audit areas. It is a process for quickly gathering information, without detailed verification, on the organizations, programs, activities, and functions.[1]

A survey should provide information about the size and scope of the entity's activities and areas in which there may be weaknesses in internal controls, uneconomical or inefficient operations, lack of effectiveness in achieving goals, or lack of compliance with laws and regulations. However, tests to determine the significance of such matters are performed in the detailed audit work as specified in the audit program.

[1] *The concepts and procedures of the audit survey are discussed in GAO Audit Standards Supplement No. 11 entitled, "The Audit Survey—A Key Step in Auditing Government Programs."*

The audit program should generally include the following information:

1. *Introduction and background*—Information should be provided about the legal authority for the audited organization, program, activity, or function; its history and current objectives; its principal locations; and similar information needed by the auditor to understand and carry out the audit program.

2. *Purpose and scope of the audit*—The purpose of the audit should be identified, and information should be provided as to whether the audit is to include one or more of the two elements—economy and efficiency and program results.

3. *Objectives of the audit*—The specific goals of the audit should be clearly stated.

4. *Definition of terms*—Any unique terms or abbreviations used by the audited entity should be defined or explained.

5. *Special instructions*—The auditors must clearly understand and reach early agreement on the responsibilities in each audit. This is especially important when the work is to be directed by a central audit organization with work to be performed at several different locations. This section may be used to list the responsibilities of each audit organization, such as preparing audit programs, supervising audit work, drafting reports, handling auditee comments, and processing the final report.

6. *Audit procedures*—For most audits, it is desirable to prescribe procedures for the auditors to follow. It is especially important when program results reviews are to be performed at a number of locations. The central audit organization planning the work should ordinarily prescribe specific methods to be followed in the examination to be sure that the data obtained from participating locations will be comparable. However, this should be done in a manner that does not restrict the auditors' professional judgment. Audit programs should never be used as a blind checklist in a way that stifles initiative and thoroughness.

7. *Report*—The audit program should set forth the general format to be followed in the audit report and discuss the types of information desired to be in it.

Reliance On Other Auditors

One premise underlying the audit standards is that Federal, State, and local governments cooperate in auditing programs of common interest so that auditors may use each other's work and avoid duplicate efforts. Auditors should rely on

ther auditors' work to the extent feasible once they satisfy themselves as to the other auditors' capabilities, independence, and performance by appropriate tests of the work or by other acceptable methods. Quality assessment guidelines for government audit organizations, developed by the intergovernmental audit forums, or Statement 1 on Quality Control Standards, by the AICPA, might be used. To do this, the auditors generally must have access to the working papers of the other auditors. For working papers containing restricted information, the pertinent regulations should be followed.

Arrangements should be made to ensure that working papers will be made available upon request to other government audit staffs and auditors who perform audits at later dates. All contractural arrangements for government audits should provide for access to working papers.

B. Supervision

The second examination and evaluation standard for government economy and efficiency audits and program results audits is:

- **Assistants are to be properly supervised.**

This standard places upon the auditor or audit organization the responsibility for seeing that staff receive appropriate guidance in performing their work to ensure high quality work and effective on the job training.

The most effective way to ensure the quality and expedite the progress of an assignment is by exercising proper supervision from the start of the planning to the completion of the report draft. Supervision adds seasoned judgment to the work done by less experienced staff and provides necessary training for them.

Assigning and using assistants is important to satisfactory achievement of objectives. Since training, experience, and other qualifications vary among auditors, work assignments must be commensurate with abilities.

Supervisors should satisfy themselves that assistants clearly understand their assigned tasks before starting the work. Assistants should be informed of not only what work they are to do and how they are to proceed, but why the work is to be done and what it is expected to accomplish.

With a seasoned staff, the supervisors' role may be more general. They may outline the scope of the work and leave details to assistants. With a less experienced staff, the supervisor may have to handle many details and specify to the staff what to do and how to do it.

Supervisory reviews should determine whether (1) conformance with audit standards is obtained, (2) the audit programs are followed, unless deviation is justified and authorized, (3) the working papers adequately support findings and conclusions and provide sufficient data to prepare a meaningful report, and (4) the audit objectives are met. Supervisory reviews should be documented and retained.

C. Legal and Regulatory Requirements

The third examination and evaluation standard for government economy and efficiency audits and program results audits is:

- **A review is to be made of compliance with applicable laws and regulations.**

In government auditing, compliance with laws and regulations is significant because government organizations, programs, activities, and functions are usually created by law and have more specific rules and regulations than do private organizations.

This standard places upon the auditors the responsibility for determining whether the audited entity has complied with the laws and regulations. Auditors should consult with legal counsel when questions arise concerning the interpretation of laws and regulations. The nature and purpose of the review of legal and regulatory requirements varies with the element of auditing being done.

> *Economy and efficiency*—The auditors are to review the laws and regulations that could significantly affect the acquisition, management, and utilization of the entity's resources.
>
> *Program results*—The auditors are to review the laws and regulations pertaining to the objectives of the entity's programs or activities to gain an understanding of the results expected from the programs or activities. They must also do sufficient testing to determine whether the programs or activities are being carried out in conformity with these laws and regulations.

When the auditors are at the central audit organization, they ordinarily should be responsible for determining which laws and regulations are to be considered in the audit. When funding from another level of government is involved, legal and regulatory requirements for that level should be made available to the auditors. Furthermore, the central audit organization is familiar with statutes and requirements and can provide them with less effort than could the auditors auditing the entity. However, it should be pointed out that the auditors performing the audit are responsible for thoroughly planning an effective audit.

The auditors at the central audit organization should review those laws and regulations that have a direct bearing or a significant impact upon the auditee or its operations. The laws and regulations that may apply to a specific government organization, program, activity, or function are often so numerous that the auditors cannot be expected to review every one that might in some way have an impact. Consequently, such a review requires considerable judgment. Some sources of information on legal and regulatory requirements follow.

1. Legal or legislative data, including:

   a. Basic legislation.
   b. Reports of hearings.
   c. Legislative committee reports.
   d. Annotated references from reference services covering related court decisions and legal opinions.
   e. Historical data relating to the legislative history of authorizing legislation.
   f. State constitutions, statutes, resolutions, and legislative orders.
   g. Local charters, ordinances, and resolutions.

2. External administrative requirements, including:

   a. Memorandums from Federal, State, or local administrative agencies.
   b. Federal, State, or local guidelines and other administrative regulations affecting program operations.

3. Grant and contract arrangements, including:

   a. Proposals from grantees.
   b. Correspondence from grantors and grantees.
   c. Memorandums of meetings held to discuss the grants and contracts.
   d. Grant and contract documents, including amendments.
   e. Grant and contract regulations and OMB management circulars.
   f. Grant budgets and supporting schedules.

D. Internal Control

The fourth examination and evaluation standard for government economy and efficiency audits and program results audits is:

- **During the audit a study and evaluation shall be made of the internal control system (administrative controls) applicable to the organization, program, activity, or function under audit.**

The lack of administrative continuity in government units because of continuing changes in elected legislative bodies and in administrative organizations increases the need for an effective internal control system.

Internal controls can be subdivided into accounting controls and administrative controls. In economy and efficiency audits and program results audits the auditors should be more concerned with administrative internal controls. Administrative controls include the plan of organization and the methods and procedures that are concerned mainly with operational efficiency and adherence to managerial policies.

The focus of the review of internal control varies with the type of audit being done.

Economy and efficiency—The auditors are to review those policies, procedures, practices, and controls applicable to the activities, and try to determine whether the entity is managing or using its resources economically and efficiently.

Program results—The auditors are to review those policies, procedures, practices, and controls which have a specific bearing on the attainment of the goals and objectives specified by the law or regulations for the organization, program, activity, or function under audit.

Internal auditing is an important part of internal control, and the auditors should consider this in performing either of the audit elements listed above. The auditors should consider the coverage of the internal auditors and the extent to which they can be relied upon to provide reasonable assurance that internal control is functioning properly.

In reviewing internal control in economy and efficiency audits it is common practice to identify problem areas first and then review controls that relate to the area in which the problem exists. Such a review is consistent with the requirements of these standards.

In view of the wide range in the size and nature of government organizations, programs, activities, and functions and in view of their organizational structures and operating methods, no single pattern for internal audit activities can be specified. Many government entities have internal audit activities identified by other names, such as inspection, appraisal, investigation, organization and methods, or management analysis. These activities assist management by reviewing selected functions. To prevent duplication of effort, all auditors should use, to the maximum extent practical, the work of internal personnel.

E. Auditing Computer-Based Systems[2]

The fifth examination and evaluation standard for government economy and efficiency audits and program results audits is

- **The auditors shall:**

  1. **Review general controls in data processing systems to determine whether (a) the controls have been designed according to management direction and known legal requirements and (b) the controls are operating effectively to provide reliability of, and security over, the data being processed.**

  2. **Review application controls of installed data processing applications upon which the auditor is relying to assess their reliability in processing data in a timely, accurate, and complete manner.**

In addition to reviewing general and application controls, the auditor should have a role in the design and development of new data processing systems or applications and significant modifications thereto.

It is possible to develop a data processing system with such poor controls that neither the manager nor the auditor can rely on its integrity. Thus, the auditor's review during the design and development of these systems has become crucial if management is to have reasonable assurance that auditable and properly controlled systems are being developed. Compliance with this objective may not always be feasible because audit organizations may not have the resources or staff skills to review the design and development of these systems. However, such review should be an auditing goal

The role of the auditor in the review of the design and development of data processing systems is discussed in appendix I.

Review of General Controls In Computer-Based Systems

The transition from mechanical data processing to automatic data processing occasions the need for revision of traditional audit approaches. The complexity and scope of such systems requires that the auditor give greater attention both to the system that processes data and the data itself. If the system is reasonably secure and adequately controlled, the auditor can rely on the data processed and reported

[2] *These standards were originally issued by the Comptroller General of the United States in March 1979 in a booklet, "Auditing Computer Based Systems."*

The auditor should distinguish between general and application controls. General controls are normally applicable to the majority of data processing being carried out within the installation, while application controls may vary among applications and are therefore reviewed on an individual application basis. (See computer audit standard 2 for application controls audit review.) The auditor is to consider the effectiveness of those general controls applicable to the system under review in performing the review of individual application controls.

Organizational controls

Authority and responsibility must be delegated in such a manner that the organizational objectives can be met efficiently and effectively. The auditor should review the organization, delegation of authority, responsibilities, and separation of duties in the entity. The goal is to determine whether lines of authority are designed to meet the organization's objectives and whether the separation of duties provides for strong internal control. For example, whenever feasible, separation of duties should provide for separation among program and systems development functions, computer operations, controls over input of data, and the control groups that maintain application controls. The "total system" must be considered.

In reviewing separation of duties, the auditor should evaluate the control strengths and report on weaknesses resulting from inadequate separation. Policies of periodic rotation of employees and mandatory vacation scheduling may help management maintain adequate separation of duties. The auditor should determine whether such policies are being followed.

Physical facilities, personnel, and security controls

Adequate physical facilities and other resources (such as adequately trained personnel and supplies) are necessary for the entity to meet its data processing objectives. The auditor should determine whether the entity has adequate resources to meet its needs.

Personnel management, including supervision, motivation, and professional development of personnel, is integral to successful data processing. The auditor should evaluate management policies and practices to ascertain whether the necessary policies exist and determine whether they are properly followed. For example, since the entire field of computers is rapidly evolving, an organization's personnel management office needs to develop, in conjunction with the data processing staff, an education and training program. This program should keep employees abreast of current developments so that they may perform their duties most efficiently and economically and be able to use new methods whenever they

are demonstrably cost effective. Inadequate personnel training and development programs in data processing can hinder accomplishment of the organization's mission.

The auditor should determine whether provisions for security of the computer hardware, computer programs, data files, data transmission, input and output material, and personnel have been adequately considered. This review should include not only the computer equipment in the central processing facility but also minicomputers, computer terminals, communications operations, and other peripheral equipment regardless of location.

In reviewing physical security of computer hardware, the auditor should consider the adequacy of a contingency plan for continued processing of critical applications in the event of a disruption of normal processing. This should include provisions for emergency power and hardware backup as well as detailed plans for using the backup equipment and transporting personnel, programs, forms, and data files to an alternate processing location. The auditor should also consider the extent to which this plan has been tested to determine the probability of continuing data processing support in the event of a real emergency.

The auditor should also review the physical security of data files. This review should ensure that, whenever feasible, data and program file libraries are kept by personnel who do not have access to computers and computer programs; the file libraries are secure; computer operators and other personnel do not have unlimited access to the libraries; and provisions have been made for backup of files (including offsite backup). When files are normally kept online, the auditor should consider whether they are protected by adequate access authorization controls and whether backup copies of files are kept regularly. Also, the auditor should verify whether data backup files are properly identified and labeled. The auditor should also check the contents to ensure that the files are complete and accurate. Similar stringent controls should exist for program backup files.

Operating systems controls

Computer systems are often controlled by operating systems (usually referred to as systems software). Since these operating systems usually provide data handling and multiprogramming capabilities, file label checking, and many other authorization controls, they are integral to the general controls over computer processing. The auditor should be aware of the controls the operating systems can exercise and should ascertain the extent to which they have been implemented, as well as how they can be bypassed or overridden. The auditor should be aware that personnel who maintain the operating systems, and other persons with the ability to modify them, may either intentionally or accidentally cause specific controls within the operating systems to become ineffective.

Hardware controls

Computer hardware frequently can detect errors related to hardware malfunctions (as contrasted with program malfunctions). The auditor should be aware of how (1) the installation relies on these hardware controls, (2) the operating systems use them, and (3) the detected hardware errors are reported within the installation as well as the procedures for taking corrective action.

Review of Application Controls In Computer-Based Systems

Before any assessment of processing reliability or integrity in any application can be complete, both the specific application controls and the general controls must be evaluated in their entirety.

Audit work done in adhering to this standard has two objectives. Both are discussed below.

Conformance with standards and approved design

The first objective is to determine whether the installed applications/systems conform to applicable standards and the latest approved design specifications.

Auditor compliance with this standard provides reasonable assurance that the approved specifications, with all built-in internal controls (such as input, processing, output), have been installed as intended, properly documented, and adequately tested.

When the auditor tests data reliability, the test should include examining documentation for selected transactions, testing the clerical accuracy of the entry and summarizing of transactions, and testing compliance with control procedures. In addition, the auditor may wish to test selected data files to identify possible exception conditions and accuracy of data conversion or capture. If the data files are kept in machine-readable condition, the auditor should, where appropriate, use computer-assisted audit techniques in testing them.

Tests for control weaknesses

The second objective is to test internal controls and the reliability of the data produced. In addition to evaluating adequacy of controls, such tests may disclose possible weaknesses in the installed applications/systems.

These audits should probe the installed applications/systems for adequacy as well as for weaknesses, changed circumstances affecting risk exposure, and so

forth. Where such weaknesses are found, the auditor's work should stimulate corrective modifications and improve the applications. Also, the auditor must be mindful, when conducting tests, that there are no guarantees that the application systems will continue to operate in accordance with the latest approved specifications. Therefore, adequacy of controls over program changes, program documentation, and operating procedures is most important.

Although auditing for fraud is not the primary objective of audits, the auditor must be alert to the possibility of fraud or other irregularities in computer systems (see discussion of fraud, abuse, and illegal acts in standard G).

F. Evidence

The sixth examination and evaluation standard for government economy and efficiency audits and program results audits is:

- **Sufficient, competent, and relevant evidence is to be obtained to afford a reasonable basis for the auditors' judgments and conclusions regarding the organization, program, activity, or function under audit. A written record of the auditors' work shall be retained in the form of working papers.**

Evidence may be categorized as (1) physical, (2) testimonial, (3) documentary, and (4) analytical.

Physical Evidence

Physical evidence is obtained by direct inspection or observation of (1) activities of people, (2) property, or (3) events. It may be in the form of memorandums summarizing the matters inspected or observed, photographs, charts, maps, or actual samples.

Testimonial Evidence

Testimonial evidence is obtained from others through statements received in response to inquiries or through interviews. The statements critical to the audit should be corroborated when possible by checks of the records and physical tests.

Documentary Evidence

Documentary evidence consists of letters, contracts, accounting records, invoices, and so forth.

Analytical Evidence

Analytical evidence includes computations, comparisons, reasoning, and separation of information into components.

Regardless of the type, the evidence should meet the basic tests of sufficiency, competence, and relevance. The working papers should reflect the details of the evidence and disclose how it was obtained.

Sufficiency

Sufficiency is the presence of enough factual, adequate, and convincing evidence to lead a prudent person to the same conclusion as the auditors'. Determining the sufficiency of evidence requires judgment. When appropriate, statistical methods may be used to establish sufficiency.

Elaborate support of insignificant points is not needed. For significant matters, however, sufficient evidence is needed to back up the conclusion.

Competence

To be competent, evidence should be reliable and the best obtainable through the use of reasonable audit methods. In evaluating the competence of evidence, the auditors should carefully consider whether there is any reason to doubt its validity or completeness. If there is, the auditors should obtain additional evidence.

The following presumptions are useful in judging the competence of evidence; however, these presumptions are not to be considered sufficient in themselves to determine competence:

1. Evidence obtained from an independent source is more reliable than that secured from the audited organization.

2. Evidence developed under a good system of internal control is more reliable than that obtained where such control is weak or unsatisfactory.

3. Evidence obtained through physical examination, observation, computation, and inspection is more reliable than evidence obtained indirectly.

4. Original documents are more reliable than copies.

Auditors should, when they deem it useful, obtain written representations from officials of the organization under audit.

Relevance

Relevance refers to the relationship of evidence to its use. The information used to prove or disprove an issue must have a logical, sensible relationship to that issue. Information that does not is irrelevant and therefore should not be included as evidence.

Working Papers

Working papers are the link between field work and the audit report. They should contain the evidence to support the findings, judgments, and conclusions in the report. Procedures should be adopted to ensure the safe custody and retention of working papers for a time sufficient to satisfy legal and administrative requirements. General guidelines for preparing working papers follow.

1. *Completeness and accuracy*—Working papers should be complete and accurate to provide proper support for findings, judgments, and conclusions, and to enable demonstration of the nature and scope of examination work.

2. *Clarity and understandability*—Working papers should be understandable without detailed supplementary oral explanations. They should also be complete and yet concise. Anyone using them should be able to readily determine their purpose, their source, the nature and scope of the work done, and the preparer's conclusions. Conciseness is important, but clarity and completeness should not be sacrificed just to save time or paper.

3. *Legibility and neatness*—Working papers should be legible and as neat as practicable. Otherwise time will be wasted in reviewing them and in preparing reports. Sloppy working papers may lose their worth as evidence. Crowding and writing between lines should be avoided by anticipating space needs and arranging the working papers before writing.

4. *Relevance*—The information in working papers should be restricted to matters that are materially important and relevant to the objectives of the assignment. There are no substitutes for a working understanding of the audit objectives, the reasons for performing a specific task, and its relationship to the objectives. This understanding comes from well-planned and well-organized work programs and effective instructions by supervisors. The practice of having all working papers contain clear statements of purpose is very helpful in ensuring that information accumulated is properly tied to audit objectives and reporting.

G. Fraud, Abuse, and Illegal Acts

The seventh examination and evaluation standard for government economy and efficiency audits and program results audits is:

- **Auditors shall: (1) be alert to situations or transactions that could be indicative of fraud, abuse, and illegal acts and (2) if such evidence exists, extend audit steps and procedures to identify the effect on the entity's operations and programs.**

Normal audit tests and procedures may uncover indications of possible fraud, abuse, or illegal acts. The auditors shall extend audit steps and procedures if the audit indicates that fraud, abuse, or illegal acts may have occurred. The extended audit steps should be directed to obtaining sufficient evidence to determine whether in fact such acts have occurred and, if so, the possible effect on the entity's operations and programs. Auditors should not release reports containing information on such acts until they consult with legal counsel.

An audit made in accordance with the standards in this statement will not guarantee the discovery of all fraud, abuse, or illegal acts that might have been committed. Nor does the subsequent discovery of fraud, abuse, or illegal acts committed during the audit period necessarily mean that the auditors' performance was inadequate. If the audit was made in accordance with these standards, the auditors have fulfilled their professional responsibility.

Reporting Standards For Economy and Efficiency Audits and Program Results Audits

CHAPTER VII

A. Form

The first reporting standard for government economy and efficiency audits and program results audits is:

- **Written audit reports are to be prepared giving the results of each government audit.**

This standard is not intended to limit or prevent discussion of findings, judgments, conclusions, and recommendations with persons who have responsibilities involving the area being audited. On the contrary, such discussions should be encouraged. However, a written report should be prepared regardless of whether such discussions are held.

Written reports are necessary (1) to communicate the results of audits to officials at all levels of government, (2) to make the findings and recommendations less susceptible to misunderstanding, (3) to make the findings available for public inspection, and (4) to facilitate followup to determine whether appropriate corrective measures have been taken.

B. Distribution

The second reporting standard for government economy and efficiency audits and program results audits is:

- **Written audit reports are to be submitted to the appropriate officials of the organization audited and to the appropriate officials of the organizations requiring or arranging for the audits unless legal restrictions or ethical considerations prevent it. Copies of the reports should also be sent to other officials who may be responsible for taking action on audit findings and recommendations and to others authorized to receive such reports. Unless restricted by law or regulation, copies should be made available for public inspection.**

Audit reports should be distributed to as many interested officials as is practicable. In some cases, the subject of the audit may involve material that is classified for security purposes or is not releasable for other valid reasons. Generally, however, the report should be distributed to officials directly interested in the findings. Such officials include those designated by law or regulation to receive such reports, those responsible for taking action on the findings and recommendations, legislators, and those of other levels of government that have provided funds to the audited entity. Also, unless restricted by law or regulation, copies should be available for distribution to or inspection by the public.

When public accountants are engaged, the engaging organization must ensure that appropriate distribution is made to interested parties. If the public accountants are to make the distribution, the engagement agreement should indicate what officials or organizations shall receive the report.

Internal auditors should follow their entity's own arrangements. Usually, they report to their entity's top management and the entity is responsible for distribution of the report.

C. Timeliness

The third reporting standard for government economy and efficiency audits and program results audits is:

- **Reports are to be issued on or before the dates specified by law, regulation, or other special arrangement. Reports are to be issued promptly so as to make the information available for timely use by management and by legislative officials.**

To be of maximum use, the report must be timely. A carefully prepared report may be of little value to decisionmakers if it arrives too late. Therefore the auditors should plan and conduct the audit with this in mind.

The auditors should consider interim reporting of significant matters to appropriate officials during the audit. Such communication is not a substitute for a final written report, but it does alert officials to matters needing immediate attention and permits them to take corrective action before the final report is completed.

D. Report Contents

The fourth reporting standard for government economy and efficiency audits and program results audits is:

- **The report shall include:**

  1. **A description of the scope and objectives of the audit.**

  2. **A statement that the audit was made in accordance with generally accepted government auditing standards.**

  3. **A description of material weaknesses found in the internal control system (administrative controls).**

4. **A statement of positive assurance on those items of compliance tested and negative assurance on those items not tested. This should include significant instances of noncompliance and instances of or indications of fraud, abuse, or illegal acts found during or in connection with the audit. However, fraud, abuse, or illegal acts normally should be covered in a separate report, thus permitting the overall report to be released to the public.**

5. **Recommendations for actions to improve problem areas noted in the audit and to improve operations. The underlying causes of problems reported should be included to assist in implementing corrective actions.**

6. **Pertinent views of responsible officials of the organization, program, activity, or function audited concerning the auditors' findings, conclusions, and recommendations. When possible their views should be obtained in writing.**

7. **A description of noteworthy accomplishments, particularly when management improvements in one area may be applicable elsewhere.**

8. **A listing of any issues and questions needing further study and consideration.**

9. **A statement as to whether any pertinent information has been omitted because it is deemed privileged or confidential. The nature of such information should be described, and the law or other basis under which it is withheld should be stated. If a separate report was issued containing this information it should be indicated in the report.**

Scope and Objectives

The scope and objectives of the audit should be described in the audit report. The statement of scope tells the reader what the auditors did and did not do.

The scope should clearly indicate whether each of the elements of audit examinations—economy and efficiency and program results—was made and the extent of each element. Also, some audits are more limited in scope than others; for example, some are confined to specific functions, activities, or locations. Such limitations should be clearly specified.

A summary of the audit objective is essential to give the reader the proper perspective—a background against which any reported findings may be considered.

Statement on Auditing Standards

A statement in the auditors' report that the audit was made in accordance with generally accepted government auditing standards will be acceptable.

Statement on Internal Control

Material weaknesses in the internal control system should be described in the audit report.

Positive and Negative Assurances

Positive assurance consists of a statement by the auditors that the tested items were in compliance with applicable laws and regulations. Negative assurance is a statement that nothing came to the auditors' attention as a result of specified procedures that caused them to believe the untested items were not in compliance with applicable laws and regulations.

Compliance Statement

Compliance with laws and regulations, in many instances, assumes importance since recipients of the reports want to know whether funds were spent for authorized purposes.

Significant instances of noncompliance should be reported, even those not resulting in a legal liability of the entity. Minor procedural noncompliance that is not illegal need not be disclosed.

In reporting noncompliance, the auditors should place their findings in proper perspective. The extent of noncompliance should be related to the number of cases examined to give the reader a basis for judging the prevalence of noncompliance.

Fraud, Abuse, or Illegal Acts

If, during an audit or in connection with an audit of a government entity, external government auditors become aware of fraud, abuse, or illegal acts or

indications of such acts affecting the government entity, they should promptly notify the top official of that entity, unless the official is believed to be a party to such acts or otherwise implicated, and the appropriate law enforcement authorities. If the acts involve funds received from other government entities, the auditors should also promptly notify officials of those entities.

Public accountants performing government audits will discharge their responsibility by promptly notifying the entity arranging for the audit. Internal government auditors should notify the top official of the entity under audit. It will be the responsibility of the entity receiving the information to notify appropriate law enforcement authorities and other government entities whose funds may be involved.

In the case of an audit of government funds received by a nongovernment entity, the auditors should promptly notify the appropriate entity arranging for the audit.

All fraud, abuse, or illegal acts or indications of such acts, whether significant or not, that auditors become aware of should be covered in a written report and submitted in accordance with the preceding paragraphs. Such information should normally be covered in a separate report, thus permitting the overall report to be released to the public. Auditors should not release to the public reports containing information on such acts, or reports with references that such acts were omitted from reports, without consulting with legal counsel, since this could interfere with legal processes or subject the implicated individuals to undue publicity.

Recommendations

The audit reports should contain recommendations whenever significant improvement in audited entities is possible. Also, recommendations should be made to effect compliance with laws or regulations when significant instances of noncompliance are noted. Reports which contain constructive recommendations can encourage improvements in the conduct of government programs and activities.

Management is primarily responsible for directing action and followup on recommendations. However, auditors, in subsequent audits, should disclose the status of recommendations included in prior reports.

If the auditors cannot make appropriate recommendations because of limited audit scope or for other reasons, they should state in the report why they cannot and what additional work is needed to formulate recommendations.

Views of Responsible Officials

One of the most effective ways to ensure that a report is fair, complete, and objective is to obtain advance review and comments by officials of the audited entity. This produces a report which shows not only what was found and what the auditors think about it but also what the responsible persons think about it and what they plan to do about it.

Advance comments should be objectively evaluated, and the report presentations and conclusions should recognize them. The comments and an analysis of them should be fairly presented in the text of the report. A promise of corrective action should be noted but should not be accepted as justification for dropping a significant point or a related recommendation.

When the comments oppose the auditors' findings or conclusions and are not, in their opinion, valid, the auditors should state their reasons for rejecting them. Conversely, they should modify their position if they find the comments valid.

Recognition of Noteworthy Accomplishments

Significant management accomplishments identified during the audit should be included in the audit report, along with deficiencies. Such information is necessary to fairly present the situation the auditors find and to provide appropriate balance to the report. In addition, inclusion of such accomplishments may lead to improved performance by other government organizations that read the report.

Issues Needing Further Study

If the scope of the audit or other factors limits the auditors' ability to inquire into certain matters they believe should be studied, the auditors should include in the report such matters and the reasons why they believe they merit further study.

Privileged and Confidential Information

Certain operating information may be prohibited from general disclosure by Federal, State, or local laws or regulations. Such information may be provided on a need-to-know basis only to persons authorized by law or regulation to receive it.

If the auditors are prohibited by such requirements from including pertinent data in the report, they should state the nature of the information omitted (for

example, "indications of illegal acts"—however, see third paragraph on page 52) and the requirement that makes the omission necessary. The auditors should obtain assurance that a valid requirement for the omission exists. If a separate report was issued on omitted information, it should be indicated in the report.

E. Report Presentation

All reports shall:

1. Present factual data accurately and fairly. Include only information, findings, and conclusions that are adequately supported by sufficient evidence in the auditors' working papers to demonstrate or prove the bases for the matters reported and their correctness and reasonableness.[1]

2. Present findings and conclusions in a convincing manner.

3. Be objective.

4. Be written in language as clear and simple as the subject matter permits.

5. Be concise but, at the same time, clear enough to be understood by users.

6. Present factual data completely to fully inform the users.

7. Place primary emphasis on improvement rather than on criticism of the past; critical comments should be presented in a balanced perspective considering any unusual difficulties or circumstances faced by the operating officials concerned.

Accuracy and Adequacy of Support

The need for accuracy is based on the need to be fair and impartial in reporting and to assure readers that what is reported is reliable. One inaccuracy in a report can cast doubt on the validity of an entire report and can divert attention from the substance of the report.

Conclusions should be clearly identified and all facts, findings, and conclusions should be supported by sufficient objective evidence. Except as necessary to make

[1] *Well-developed findings have the following common attributes that provide the framework for an expanded scope audit report: (1) statement of condition (what is), (2) criteria (what should be), (3) effect (difference between what is and what should be), and (4) cause (why it happened).*

convincing presentations, detailed supporting data need not be included. In most cases, a single example of a deficiency is not sufficient to support a broad conclusion or a related recommendation. All that it supports is that there was a deviation, an error, or a weakness.

Convincingness

Findings must be presented in a convincing manner and conclusions and recommendations must follow logically from the facts presented. The information in reports must be sufficient to persuade the readers of the importance of the findings, the reasonableness of the conclusions, and the desirability of their accepting the recommendations. Reports designed in this manner can do much to focus the attention of responsible officials on the matters in reports which warrant attention and to stimulate corrective actions.

Objectivity

Findings should be presented objectively and should include sufficient information on the subject to give readers a proper perspective. The audit report should be fair and not misleading and should place primary emphasis on matters needing attention. The auditor should guard against the tendency to exaggerate or overemphasize deficient performance noted.

The information needed to provide proper report balance and perspective should include:

1. Why the audit was made.

2. The size and nature of the activities or programs audited.

3. Correct and fair descriptions of findings. To avoid misinterpretations, the size of the sample of items tested and the methods of selecting the items should be given.

Clarity and Simplicity

Reports must be as clear and simple as is practicable. The auditor should not assume that readers have detailed technical knowledge of the subject. If technical terms and unfamiliar abbreviations must be used, they should be clearly defined. Flowery expressions and stilted language must be avoided.

Proper organization of material and precision in stating facts, analyzing them,

and drawing conclusions are essential to clarity. Visual aids (such as pictures, charts, graphs, maps) should be used when possible.

Conciseness

The reports should be no longer than necessary. Too much detail detracts from a report, may even conceal the real message, and may confuse or discourage readers.

Although there is room for considerable judgment in determining the content of reports, those that are complete, but still concise, are likely to receive attention.

Completeness

Although reports should be concise, they should also be complete. Reports should contain sufficient information about findings, conclusions, and recommendations to promote adequate understanding of the matters reported and to provide convincing, but fair, presentations in proper perspective. Sufficient background information should also be included.

Readers should not be expected to possess all the facts that the auditor has, and therefore reports should not be written on the basis that the bare recital of facts makes the conclusions inescapable. Conclusions should be specified, rather than left to be inferred by readers.

Constructiveness of Tone

The tone of reports should encourage favorable reaction to findings and recommendations. Titles, captions, and the text of reports should be stated constructively. Although findings should be presented in clear, forthright terms, the auditors should keep in mind that their objective is to obtain favorable reaction and that this can best be done by avoiding language that unnecessarily generates defensiveness and opposition. Although criticism of past performance is often necessary, the report should emphasize needed improvements rather than criticism.

Auditing Computer-Based Systems—The Auditor's Role During System Design and Development[1]

With the computer becoming more complex through the development of sophisticated multiprogramming capacity, the growing number of telecommunications links, and the wide variety of new input and output devices, another dimension has been added to the auditor's role. Auditors must now be able to perform a wide variety of tasks which, until recently, did not exist or were not considered part of their role.

For example, when manual systems were audited, a wide variety of approaches were generally available and the most appropriate was selected for the circumstances. If there were control weaknesses, corrective changes were easily formulated and suggested. However, it is now possible to develop a data processing system with such poor controls that neither the manager nor the auditor can rely on its integrity.

The auditor's role during the design and development processes of automated systems has become crucial if management is to have reasonable assurance that auditable and properly controlled systems are being developed. Thus, it should be the objective of all audit organizations and auditors[2] to:

> "Review the design and development of new data processing systems or applications, and significant modifications thereto."[3]

Compliance with this objective may not always be feasible because audit organizations may not have the resources or staff skills to review the design and development of automated systems. Also, internal auditors may require additional specific managerial authorization or direction to perform this work, and external auditors such as public accountants may need a special engagement. However, compliance with this objective should be an auditing goal.

Whenever top management direction to perform such work has not already been given, the auditor must alert management to the potential results of such restriction. The auditor should formally communicate to management information on the possible adverse effects of not requiring audit review and evaluation of automated systems design and development processes. Such communication should point out that without effective audit of these processes, the systems

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[1] *These standards were originally issued by the Comptroller General of the United States in March 1969 in a booklet, "Auditing Computer-Based Systems."*

[2] *Applies to both external and internal auditors.*

[3] *Includes software matters as well as hardware configuration decisions.*

- may not possess the built-in controls necessary to provide reasonable assurance of proper operation;

- may not provide the capability to track events through the systems and thus impede, if not completely frustrate, audit review of the systems in operation; and

- (for financial systems) may not permit a classification of transactions in a manner that allows the preparation of financial statements in accordance with generally accepted accounting principles and may result in qualifications of the auditor's opinion on the financial statements.

Both the auditor and management have an interest in ensuring that system design, development, and overall operations achieve the objectives of adequate internal controls and effective auditability.[4] For systems already in existence when audits are made, the auditor should determine whether the objectives of the system are being achieved.

Systems and applications of computer-based information systems have become more complex and interrelated. Initially, there were separate applications for personnel, payroll, and labor cost accounting. Each application or system was processed independently of the other, and its input material was generated from separate and distinct sources and then processed against separate data files.

With the integration of application systems now being encountered, the payroll, personnel, and labor-cost-accounting applications can be interrelated subsystems of a far larger online system, and the outputs of one subsystem can now be the inputs for another without any human review. Thus, a control weakness in one segment of the system may have completely unanticipated effects on other segments with a cascading of unanticipated effects causing catastrophic results. Such mistakes, waste, and confusion may even adversely affect the entity's viability.

The objectives of requiring auditor review of system design, development, and modification are set forth below, with comments on each.

[4] *Because the engagement of public accountants has unique conditions, it is unlikely that public accountants will be able to comply fully with this objective. However, they may partially comply by determining the extent and effectiveness of the work of the company's internal auditors or outside accountants in the design and development phases.*

Management policies

- Objective 1: To provide reasonable assurance that systems/applications carry out the policies management has prescribed for them.

Policies on what is expected of automated systems should be established by management, and the auditor should determine whether they are being adhered to in design. The auditor should ascertain whether an appropriate approval process is being followed, both in developing new systems and in modifying existing systems. The auditor should consider the need for approval of a system's design by data processing management, user groups, and other groups whose data and reports may be affected. Also, the auditor should review the provisions for security required by management to protect data and programs against unauthorized access and modification.

If management's requirements are not being met, or have not been clearly articulated, the auditor must report such shortcomings to officials who can take corrective action. Frequently in the past, efforts to make new systems/applications operational by scheduled dates have resulted in some elements or controls—that were desired by management—being set aside by designers for later consideration. Auditors, in retaining their independence during the design and development processes, should report such actions to top management for resolution.

Audit trail

- Objective 2: To provide reasonable assurance that systems/applications provide the controls and audit trails needed for management, auditor, and operational review.

In financial applications, a transaction must be capable of being traced from its initiation, through all the intermediate processing steps, to the resulting financial statements. Similarly, information in the financial statements must be traceable to its origin. Such capability is referred to by various terms—such as audit trail, management trail, transaction trail—and is also highly essential in nonfinancial systems/applications. The reliability of the output can be properly assessed when the transaction processing flow can be traced and the controls over it (both manual and automated) can be evaluated.

During the design and development process, the auditor may provide, through formal correspondence, suggested audit trails or other controls to the design/development team. By doing so through formal correspondence, the auditor will remain independent.

Audit of the systems design and development processes can help assure management that this capability is in fact being built into the systems/applications.

Controls

- Objective 3: To provide reasonable assurance to management that systems/applications include the controls necessary to protect against loss or serious error.

The system design and development processes include (1) defining the processing to be done by a computer, (2) designing the processing steps, (3) determining the data input and files that will be required, and (4) specifying each individual program's input data and output. Each area must be properly controlled, in consonance with good management practices, and the auditor's review of these matters is designed to provide reasonable assurance to management that the systems/applications, once placed in operation, will be protected against loss or serious error.

Properly designed systems, with excellent control mechanisms built in, might have these controls bypassed or overridden by management direction. (This area is addressed under standards in chapter VI for computer-related auditing.) This has occurred in systems that were recently implemented and put into operation. Many times the designers and developers override such controls to get the system operational and then forget to activate the controls after the system errors have been corrected.

Almost every system has manual aspects (for example, input origination, output disposition), and these, together with the electronic data processing controls, are considered when the auditor is reviewing system controls for adequacy.

Efficiency and economy

- Objective 4: To provide reasonable assurance that systems/applications will be efficient and economical in operation.

Determining whether an organization is managing and using its resources (such as personnel, property, space) efficiently and economically and reporting on the causes of inefficiencies or uneconomical practices, including inadequacies in management information systems, administrative procedures, or organizational structures, is considered here as a basic characteristic of government program audits. With the development of complex systems/applications, the auditor's review should also focus on whether the system has been developed in such a way

that operations will produce desired results at minimum cost. For example, early in a system's development, the auditor should review the adequacy of the (1) statement of mission needs and system objectives, (2) feasibility study and evaluation of alternative designs to meet those needs and objectives, and (3) cost-benefit analysis which attributes specific benefits and costs to system alternatives.

Legal requirements

- Objective 5: To provide reasonable assurance that systems/applications conform with legal requirements.

Legal requirements applicable to systems/applications may originate from various sources. One such requirement is compliance with State and Federal privacy statutes, which restrict collection and use of certain types of information about individuals. Safeguards are obviously necessary in such systems. Conversely, organizations subject to the Freedom of Information Act should have systems/applications designed so that appropriate and timely response can be made to legitimate requests. The applicability of the Federal Information Processing Standards (required by Public Law 89-306, Oct. 1965) program to the system involved should also be considered by the auditor. If such standards apply, they should be included in the auditor's review.

Once again, auditor review of the design and development processes can help assure management that these requirements have been considered and satisfied.

Documentation

- Objective 6: To provide reasonable assurance that systems/applications are documented in a manner that will provide the understanding of the system required for appropriate maintenance and auditing.

The auditor should determine whether the design, development, and modification procedures produce documentation sufficient to define (1) the processing that must be done by programs in the system, (2) the data files to be processed, (3) the reports to be prepared, (4) the instructions to be used by computer operators, and (5) the instructions to user groups for preparation and control of data. The auditor should also ascertain whether management policy provides for evaluation of documentation and adequate testing of the system before it is made operational. These steps are taken to ensure that the system and its controls can be relied on.

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The methods of achieving these six objectives are determined by the circumstances of each situation. Generally, audit work covers reviewing the

adequacy of management policies—examining approvals, documentation, test results, cost studies, and other data to see whether management policies are followed and legal requirements met—and determining whether the systems/applications have the necessary controls and trails.

The auditor should not become part of the system design/development team to perform work under this objective. Auditor involvement should be limited to reviewing the team's work as it occurs and reporting to management an objective evaluation of the work.

At the completion of the design and development processes, and during final system testing phases, the auditor should verify that the implemented system conforms with these six objectives.

On all audits of programs, activities, and functions supported by existing computer-based systems, the auditor shall follow the general and application standards for computer-related auditing. If, during an audit, the auditor finds indications that the system objectives—as set forth in this objective—are not being met or have changed, this should be reported to appropriate officials.

Glossary

Abuse Furnishing excessive services to beneficiaries, violating program regulations; and performing improper practices, none of which involves prosecutable fraud.

Audit A term used to describe not only work done by accountants and auditors in examining financial statements, but also work done in reviewing (1) compliance with laws and regulations, (2) economy and efficiency of operations, and (3) effectiveness in achieving program results.

Audit plan or schedule A schedule of individual audits to be conducted and/or contracted for over a normal audit cycle. A normal audit cycle is defined by the audit organization: 1-year, 2-year, etc.

Audit program The detailed steps and procedures to be followed in conducting the audit and preparing the report. A written audit program should be prepared for each audit and it should include such information as the purpose and scope of the audit, background information needed to understand the audit objectives and the entity's mission, definition of any unique terms or abbreviations used by the entity, objectives of the audit, and the audit and reporting procedures to be followed.

Audit standards General measures of the quality and adequacy of the work performed. They also relate to the auditor's professional qualities.

Auditor The term as used in this statement refers to the auditor as well as the audit organization unless otherwise indicated in this statement.

Auditor's opinion An expression in the auditor's report as to whether the information in the financial statement of the entity is presented fairly in accordance with generally accepted accounting principles (or with other specified accounting principles applicable to the auditee) applied on a basis consistent with that of the preceding reporting period.

Competence — A term pertaining to evidence; it should be valid and relevant.

Compliance — A determination of whether (1) there is compliance with laws and regulations that could materially affect the entity's financial position and statements, (2) there is compliance with laws and regulations that could significantly affect the acquisition, management, and utilization of the entity's resources, and (3) programs are being carried out in conformity with laws and regulations.

Comprehensive grant audit — An audit of an individual grant made in accordance with an individual Federal grant audit guide.

Computer-based information system — A general term to denote all the operations and procedures involved in the preparation and handling of source media, that contain data or the basic elements of information, according to precise rules. Includes using a device that is capable of accepting data in a prescribed form, processing it, and printing the results in a specified format.

Conclusions — The auditor's interpretations of the evidence stated in relation to the objectives.

Content — The fourth reporting standard for government economy and efficiency audits and program results audits. It requires, in part, that the audit report present the scope of the audit, the findings and conclusions, and recommended improvements when feasible and appropriate.

Contract audit — An examination and evaluation of government contracts for goods and services with private as well as nonprofit organizations.

Coordination — The working together by audit organizations in developing and carrying out individual audits. Such actions include continuous liaison, the exchange of audit techniques, and the development of audit schedules to minimize the amount of audit effort required.

Due professional care — The third general standard for government auditing.

Economy and efficiency audits — Audits which determine (a) whether the entity is managing and utilizing its resources (such as personnel, property, space) economically and efficiently, (b) the causes of inefficiencies or uneconomical practices, and (c) whether the entity has complied with laws and regulations concerning matters of economy and efficiency.

Elements of auditing — The three parts of an expanded scope audit: financial and compliance, economy and efficiency, and program results.

Evaluation — Ascertaining the value of something by comparing accomplishments with a standard or goal.

Evidence — The sixth examination and evaluation standard for government economy and efficiency audits and program results audits. It states that sufficient, competent, and relevant evidence is to be obtained to afford a reasonable basis for the auditor's judgments and conclusions regarding the organization, program, activity, or function. A written record of the auditor's work shall be retained in the form of working papers.

Examination — A term used to describe work done by accountants and auditors.

Examination and evaluation standards for economy and efficiency audits and program results audits — All the activities performed during the audit, other than preparing the report. These standards require that (1) the work be adequately planned, (2) assistants be properly supervised, (3) compliance with laws and regulations be reviewed, (4) the system of internal controls be evaluated, (5) general and application controls in computer-based systems be reviewed, (6) sufficient, competent, and relevant evidence be obtained, and (7) auditors be alert to situations or transactions that could be indicative of fraud, abuse, and illegal acts and if such evidence exists, extend audit steps and procedures to identify the effect on the entity's operations and programs.

Expanded scope audits — Audits that go beyond the traditional financial audit.

External impairments — One of the four general classes of impairments. These are external factors that can restrict the audit or interfere with an auditor's ability to form independent and objective opinions and conclusions.

Financial and compliance audits — Audits which determine (a) whether the financial statements of an audited entity present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles and (b) whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

Financially assisted programs — Any activities, services, projects, or processes of any agencies, commissions, councils, administrations, Government-owned corporations, or instrumentalities of any governments which provide assistance or benefits to other levels of government; public, quasipublic, private, profit, and nonprofit organizations and institutions; specialized groups and individuals (such as low-income, senior citizens, handicapped).

Findings/results — The result of information development; a logical pulling together of information and arriving at conclusions on the basis of the sum of the information about an organization, program, activity, function, condition, or other matter which was analyzed or evaluated and considered to be of interest, concern, or use to the entity. It need not be critical or be concerned only with deficiencies or weaknesses. Purely informational findings need not include conclusions. A finding could be the basis for recommendations for action by the entity, but a recommendation is not part of a finding.

Fraud — The obtaining of something of value, unlawfully, through willful misrepresentation.

Generally accepted accounting principles — Rules and procedures established by authoritative bodies or conventions that have evolved through custom and common usage. The National Council on Governmental Accounting's Statement 1, "Governmental Accounting and Financial Reporting Principles" is generally acknowledged as the authoritative publication in the area of accounting for State and local government units. GAO's publication, "Accounting Principles and Standards for Federal Agencies" contains generally accepted accounting principles for the Federal agencies.

Generally accepted government auditing standards — Those audit standards set forth in the publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions," issued by GAO.

General standards — A term pertaining to (1) the qualifications of the assigned audit staff, (2) the audit organization's and the individual auditor's independence, and (3) the exercise of due professional care in conducting the audit and in preparing related reports.

Governmental accountability — The duty of those governments and agencies that are entrusted with public resources and the authority for applying them, to render a full accounting of their activities to the public.

Government entity — Generally means a:
- —State department.
- —Municipality (for instance a city or town with its own incorporated government for local affairs).
- —County, independent school district, special district, or authority.
- —Nonprofit agency.
- —Regional planning agency or commission.
- —Federal agency.

Grantee — A recipient of grant funds.

Illegal acts — Violations of laws.

Independence — The second general standard for government auditing. In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, must be free from personal or external impairments to independence, must be organizationally independent, and shall maintain an independent attitude and appearance.

Internal control

This includes administrative control and accounting control. According to the AICPA, SAS No. 1, Section 320:

"Administrative control includes, but is not limited to, the plan of organization and the procedures and records that are concerned with the decision processes leading to management's authorization of transactions. Such authorization is a management function directly associated with the responsibility for achieving the objectives of the organization and is the starting point for establishing accounting control of transactions.

"Accounting control comprises the plan of organization and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records and consequently is designed to provide reasonable assurance that:

"a Transactions are executed in accordance with management's general or specific authorization.

"b Transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and (2) to maintain accountability for assets.

"c Access to assets is permitted only in accordance with management's authorization.

"d The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences."

Management, effectiveness, operational, compliance, or performance audits

Other terms used for economy and efficiency audits, and program results audits.

Materiality

The concept which refers to the significance of an item of information which could appear, does appear, or does not appear in a financial statement.

Organizational impairments

One of the four general classes of impairments. They concern the auditor's being sufficiently removed from political pressures within the organizational structure of a government.

Personal impairments

One of the four general classes of impairments. They involve circumstances in which auditors cannot be impartial because of their views or personal situations.

Planning

The first examination and evaluation standard for government auditing. This standard requires that the work is to be adequately planned. Adequate planning should include consideration of coordination with other government auditors, personnel to be used, work to be done, and the format and general content of the report.

Program evaluation

Goes beyond the review of program results. In its broadest sense, program evaluation involves not only appraising what is being accomplished in relation to costs but also whether the objectives of the programs are proper and suitable.

Program results audits

Audits which determine (a) whether the desired results or benefits established by the legislature or other authorizing body are being achieved and (b) whether the agency has considered alternatives that might yield desired results at a lower cost.

Qualifications

The first general standard for government auditing. The assigned staff must collectively possess (1) a knowledge of accounting and auditing theory and procedures and be able to apply it, (2) a knowledge of government organizations, programs, activities, and functions, and (3) the skills necessary for the audit.

Qualifications of public accountants

When public accountants are engaged for assignments requiring a professional opinion on financial statements, only qualified public accountants should be

engaged. Qualifications are deemed to be met by certified public accountants, or by public accountants licensed on or before December 31, 1970, or persons working for a certified public accounting firm, or a public accounting firm licensed on or before December 31, 1970.

Recommendations The auditor's recommendations in the audit report for actions to improve problem areas noted in the audit and to improve operations.

Relevance A term pertaining to evidence; the relationship of the information to its use.

Report (audit)

(1) The auditor's report in a financial audit—the medium through which an auditor expresses an opinion or, if circumstances require, disclaims an opinion.

In either case, the auditor states whether the examination was made in accordance with generally accepted auditing standards. These standards require a statement as to whether, in the auditor's opinion, the financial statements are presented in conformity with generally accepted accounting principles and whether such principles have been consistently applied in the preparation of the financial statements of the current period in relation to those of the preceding period.

(2) The auditor's report in other than financial audits—the medium through which an auditor communicates the results (findings) of the audits. The report contains conclusions, positions, and recommendations based on the audit.

(3) Other special auditors' reports—the medium through which auditors communicate information required of them by the audit engagement—include "Statement on Compliance," "Statement on Internal Control," and so forth.

Reporting standards for economy and efficiency audits and program results audits The form, distribution, timeliness, and contents of the report.

Review To study specific activities or operations to the extent necessary to achieve the objectives of the economy and efficiency audit or the program results audit. This includes exploring and developing all pertinent and significant information necessary to properly consider, support, and present findings, conclusions, and recommendations.

Scope (audit report) A section in the audit report which indicates the type of audit made; the extent of the audit; and the specific organizations, programs, activities, and functions covered.

Scope impairment One of the four general classes of impairments. These are external factors that can restrict the audit or interfere with the auditor's ability to form objective opinions and conclusions.

Sufficiency The presence of enough competent evidence to provide the auditor with a reasonable basis for forming opinions, judgments, and conclusions.

Supervision This standard for government auditing requires that assistants be properly supervised. Supervisors must ensure that less skilled staff members receive training and guidance in doing their work and that all staff clearly understand their tasks and what the work is expected to accomplish.

Survey A process to gather information, without detailed verification, on the entity being audited. It is designed to identify problem areas warranting additional review and to obtain information for use in planning and accomplishing the audit. The concepts and procedures of the audit survey are discussed in GAO Audit

Standards Supplement No. 11, "The Audit Survey—A Key Step in Auditing Government Programs."

Timeliness — This standard for government auditing states that reports are to be issued on or before the dates specified by law, regulation, or other special arrangement and, in any event, as promptly as possible so as to make the information available for timely use by management and by legislative officials.

Working papers — They provide support for the auditor's opinions, conclusions, and judgments and they aid in the conduct and review of the auditor's work. They include the collection of schedules, papers, analyses, correspondence, and other material prepared or obtained by the auditor during the audit.

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REGULATIONS GOVERNING WITHDRAWAL OF CASH FROM THE TREASURY
FOR ADVANCES UNDER FEDERAL GRANT AND OTHER PROGRAMS

1977
Department Circular No. 1075
(Fourth Revision)

Department of the Treasury
Washington, D. C. 20226

Fiscal Service
Bureau of Government
Financial Operations

TO HEADS OF GOVERNMENT DEPARTMENTS AND AGENCIES
AND OTHERS CONCERNED:

The following regulations were published in the Federal Register on December 14, 1977:

TITLE 31 - MONEY AND FINANCE: TREASURY

CHAPTER II - FISCAL SERVICE,
DEPARTMENT OF THE TREASURY

(Department Circular No. 1075 (Fourth Revision))

PART 205 - WITHDRAWAL OF CASH FROM THE TREASURY
FOR ADVANCES UNDER FEDERAL GRANT AND
OTHER PROGRAMS

Part 205, Chapter II of Title 31 of the Code of Federal Regulations (Treasury Department Circular No. 1075 (Fourth Revision)) is amended and revised to read as follows:

Part 205 - WITHDRAWAL OF CASH FROM THE TREASURY FOR ADVANCES
UNDER FEDERAL GRANT AND OTHER PROGRAMS

Sec.

205.1 Purpose.
205.2 Scope of regulations.
205.3 Definitions.
205.4 General regulations.
205.5 Irrevocability of the letter of credit.
205.6 Contract or grant provisions.
205.7 Termination of advance methods of financing grant programs.
205.8 Responsibilities of Federal program agencies.
205.9 Implementing instructions.
205.10 Waivers.

AUTHORITY: 5 U.S.C, 301; sec. 203, 82 Stat. 1101 (42 U.S.C. 4213).

SOURCE: Department Circular 1075, Fourth Revision, FR 42 62927, December 14, 1977.

§ 205.1 Purpose.

This part prescribes the regulations governing advances to recipient organizations for financing operations under Federal grant and other programs.

§ 205.2 Scope of regulations.

(a) The regulations in this part apply to any Federal program requiring advances to finance the recipient organization's activities in carrying out the program, whether by contract, grant, contribution, or other form of agreement. (Advance payments on procurement contracts are also subject to the provisions of the Federal Procurement Regulations regarding contract financing which appear at 41 CFR 1-30 and the provisions of the Armed Services Procurement Regulations regarding defense contracting which appear at 32 CFR 163.) The regulations in this part are not generally applicable to loan programs. However, the letter-of-credit method should be considered by Federal program agencies for application to loans carrying interest rates which are lower than Treasury borrowing rates.

(b) These regulations are not intended to apply to Government disbursements made to reimburse an organization for work already performed and financed with the organization's own working capital. However, these regulations do apply to reimbursable grant programs involving nonprofit organizations participating in the single letter-of-credit funding technique. Any other specific application of features of these regulations to reimbursement payments will be considered by the Department of the Treasury if requested by a Federal program agency.

§ 205.3 Definitions.

For the purpose of this part:

(a) Recipient organization means an organization outside the Federal Government (including any State and local government, educational institution, international organization and any other public and private organization) receiving cash advances under Federal grant and other programs.

(b) Primary recipient organization means a recipient organization receiving cash advances directly from the Federal Government.

(c) Secondary recipient organization means a recipient organization receiving cash advances from a primary recipient organization.

(d) Direct Treasury check method means the method whereby payment is made directly to a recipient organization by Treasury check authorized by the responsible officer of the Federal program agency.

(e) Letter of Credit - Treasury Regional Disbursing Office System means the system whereby the letters of credit are maintained and serviced by Treasury disbursing centers and Treasury regional disbursing offices.

(f) Letter of Credit - Federal Reserve Bank System means the system whereby the letters of credit are maintained and serviced by Federal Reserve banks and branches.

(g) Checks paid technique means the procedure whereby the drawdown on the letter of credit is delayed until the checks issued for program disbursements are presented to the recipient organization's bank for payment.

(h) Delay of drawdown technique means the procedure whereby the drawdown on the letter of credit is delayed until after the checks issued for program disbursements have been forwarded to the payees.

(i) Consolidation of funding to the same recipient organization under one letter of credit means the procedure whereby, within a single accounting entity, the Federal program agency combines all advance funding to the same recipient organization under one letter of credit. In achieving this objective, the Federal program agency shall include all advance funding to the recipient organization including that which ordinarily would not qualify because it does not meet the criteria established for the letter-of-credit method.

(j) Single letter-of-credit technique means the procedure whereby numerous letters of credit issued by different accounting entities within the same Federal department to State agencies, local government agencies, or recipient institutions are replaced by one centrally administered single letter of credit issued to one central organization within that State, local government, or recipient institution.

(k) Working capital advance basis means the procedure whereby funds are advanced to the recipient organization to cover its estimated disbursement needs for a given initial period. Thereafter, the recipient organization would be reimbursed for the amount of its actual cash disbursements. The amount of the initial advance shall be geared to the reimbursement cycle so that after the initial period the payments are approximately equal to the average amount of the recipient organization's unreimbursed program payments.

§ 205.4 General regulations.

(a) Cash advances to a recipient organization shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program costs and the proportionate share of any allowable indirect costs.

(b) If a Federal program agency has, or expects to have, a continuing relationship with a recipient organization for at least one year, involving annual advances aggregating at least $120,000, the agency shall use the letter-of-credit method. Letters of credit will be established with the Treasury disbursing centers and Treasury regional disbursing offices (Letter of Credit - Treasury Regional Disbursing Office System) or the Federal Reserve banks and branches (Letter of Credit - Federal Reserve Bank System) as determined by the Commissioner, Bureau of Government Financial Operations, or his designee.

(c) When annual advances to a recipient organization aggregate less than $120,000 or there is not a continuing relationship for at least one year, the cash advances shall ordinarily be made by the direct Treasury check method. Such cash advances shall be made only in amounts necessary to meet current disbursement needs and shall be scheduled so that the funds are available to the recipient organization only immediately prior to their disbursement by the organization.

(d) Each Federal program agency shall work toward the objective of the consolidation of funding to the same recipient organization under one letter of credit. Also, the single letter-of-credit, checks paid, and the delay of drawdown techniques of withdrawing funds under the letter-of-credit method shall be employed wherever feasible under the direction and approval of the Department of the Treasury.

(e) Cash advances made by primary recipient organizations to secondary recipient organizations shall conform substantially to the same standards of timing and amount as apply to cash advances by Federal program agencies to primary recipient organizations. Federal program agencies shall require primary recipient organizations to develop procedures whereby secondary recipient organizations can obtain funds from the primary recipient organization as needed for disbursement.

§ 205.5 Irrevocability of the letter of credit.

A letter of credit is irrevocable (the equivalent of cash available to the recipient organization) to the extent the recipient organization has obligated funds in good faith thereunder in executing the authorized Federal program in accordance with the grant, contract, or other agreement.

§ 205.6 Contract or grant provisions.

Use of letters of credit shall be covered by a clause in the grant, contract, or other financing agreement whereby the recipient organization commits itself to (a) initiating cash drawdowns only when actually needed for its disbursements, (b) timely reporting of cash disbursements and balances as required by the Federal program agency, and (c) the imposition of the same standards of timing and amount upon any secondary recipient organizations including the furnishing of reports of cash disbursements and balances, with the understanding that failure to adhere to these provisions may cause the unobligated portion of the letter of credit to be revoked by the Federal program agency or by the Department of the Treasury. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated in OMB Circular A-102 revised for State and local governments and OMB Circular A-110 for institutions of higher education, hospitals, and other nonprofit organizations.

§ 205.7 Termination of advance methods of financing grant programs.

When a recipient organization receiving cash advances by a letter of credit or by direct Treasury check method has demonstrated to a Federal program agency an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and the disbursement thereof, the Federal program agency, unless prohibited by the statutes governing the program(s) in question, shall terminate advance financing and shall require the recipient organization to finance its operations with its own working capital, and payments to the recipient

organization shall be made by direct Treasury check method to reimburse it for actual cash disbursements. In those cases in which the reimbursement method is not feasible, arrangements may be made whereby the operations of the recipient organizations are financed on a working capital advance basis.

§ 205.8 Responsibilities of Federal program agencies.

Regardless of the particular method used to advance funds, the Federal program agency shall be responsible for (a) making such reviews of the financial practices of recipient organizations, both primary and secondary, as are necessary to ensure that the provisions of this part are being complied with, and (b) instituting such remedial measures as may be necessary in the event that a recipient organization demonstrates its unwillingness or inability to comply with these provisions. Federal program agencies shall formulate procedural instructions which specify the methods employed to carry out these responsibilities and shall forward copies of such instructions to the Commissioner, Bureau of Government Financial Operations, or his designee for approval. Also, each Federal program agency shall furnish the Department of the Treasury such periodic reports showing cash balances in the hands of the recipient organizations and results of reviews of the financial practices of recipient organizations as are required by the Commissioner, Bureau of Government Financial Operations, or his designee.

§ 205.9 Implementing instructions.

The Commissioner, Bureau of Government Financial Operations, will issue implementing instructions for the regulations established by this part in Volume I of the Treasury Fiscal Requirements Manual.

§ 205.10 Waivers.

Any waivers of the provisions of this part previously granted to Federal program agencies are hereby revoked. Requests for waivers for specific provisions of this part shall be presented in writing to the Commissioner, Bureau of Government Financial Operations, or his designee.

Note.—The Department of the Treasury has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

Effective Date: These regulations are effective December 14, 1977.

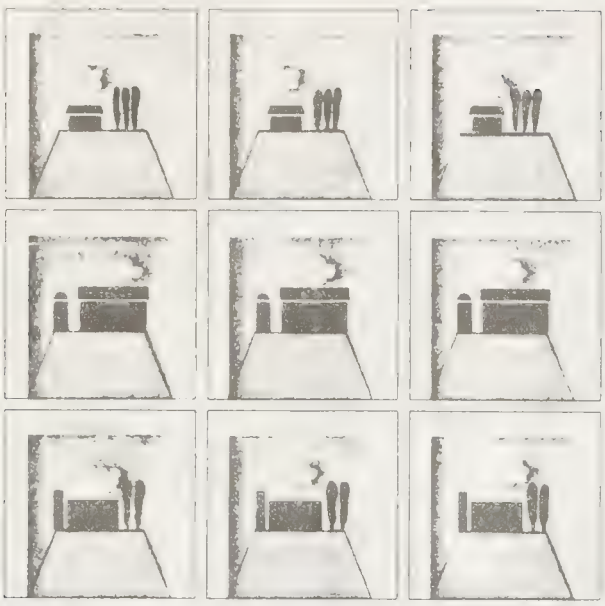
Dated: October 14, 1977

Paul Vaga

Acting Fiscal Assistant Secretary

U.S. Department of Housing and Urban Development
Office of New Community Development Corporation

When a Public Agency Acquires Your Property



Introduction

If you own real estate to be acquired for a public project which receives financial assistance from the Department of Housing and Urban Development (HUD), you may be protected by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act).

This brochure describes many of the important protections of the Uniform Act. It also gives general information about public acquisition of real estate (real property) that should be useful to you.

Most real property acquisitions by a public agency under the following HUD programs are covered by Title III (Uniform Real Property Acquisition Policy) of the Uniform Act:

Community Development Block Grants
Urban Development Action Grants
Low-Income Public Housing

Some acquisitions under other HUD programs are also covered by the Uniform Act. If you are not sure whether the acquisition of your property is covered by this law, please contact the public agency acquiring your property or the HUD Area Office serving your community. These HUD offices are listed in the back of this brochure

What Right Has Any Public Agency To Acquire My Property?

Every State government has certain powers which are necessary for it to operate effectively. For example, States have the power to levy taxes and the power to maintain order. Another State power is the power to acquire private property for public purposes. This is known as the power of eminent domain.

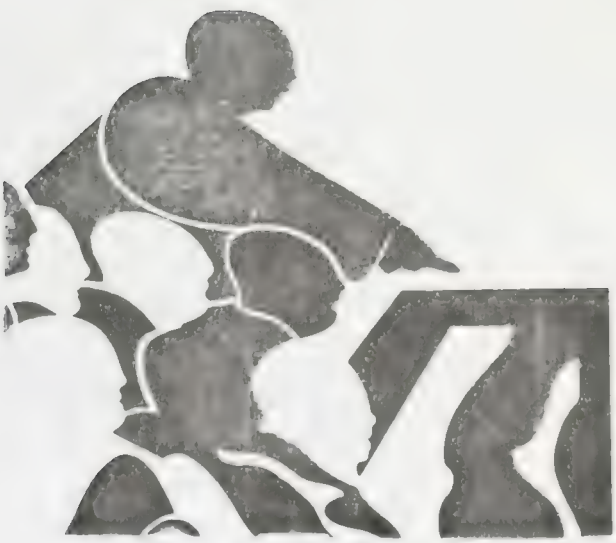
The rights of each of us are protected, however, by the Fifth and Fourteenth Amendments of the U.S Constitution and by State constitutions and eminent domain laws which guarantee that if a public agency takes private property it must pay "just compensation" to the owner.

Furthermore, if the acquisition is covered by the Uniform Act, the owner has additional protections, some of which are explained in this brochure.

Who Made The Decision To Buy My Property?

The decision to acquire a property for a public project usually involves many persons and many decisions. If HUD funds are provided for the project under the Community Development Block Grant Program, the final decision to proceed with the project is made by local government after a thorough review which includes public hearings to obtain the views of interested citizens.

If you have any questions about the project or the selection of your property for acquisition, you should ask a representative of the public agency which is responsible for the project.



How Will The Public Agency Determine How Much To Offer Me For My Property?

Before making you an offer, the public agency will obtain at least one appraisal of your property by a competent real property appraiser who is familiar with local property values. The appraiser will inspect your property and state his professional opinion of its current fair market value in an appraisal report. After the appraiser has completed his work, a review appraiser may recheck the work to assure that the estimate is fair and the work conforms with professional appraisal standards.

The public agency is required to offer you "just compensation" for your property. This amount cannot be less than the fair market value of your property, as determined by the agency on the basis of its appraisal (s).

What Is Fair Market Value?

Fair market value is sometimes defined as that amount of money which would probably be paid for a property in a sale between a willing seller, who does not have to sell, and a willing buyer, who does not have to buy. In your State a different but similar term or definition may be used.

The fair market value of a property is generally considered to be "just compensation." Fair market value does not take into account intangible elements such as sentimental value, good will, business profits, or any special value that your property may have for you or for the public agency.

How Does An Appraiser Determine The Fair Market Value Of My Property?

Each parcel of real property is different and therefore no single formula can be devised to appraise all properties. Among the factors an appraiser typically considers in estimating the value of real property are:

- How it compares with similar properties in the area that have been sold recently.
- How much it would cost to reproduce the buildings and other structures, less any depreciation.
- How much rental income it could produce.

Will I Have A Chance To Talk To The Appraiser?

Yes. You must be contacted and given the opportunity to accompany the appraiser on his inspection of your property. You may then inform the appraiser of any special features which you believe may add to the value of your property. It is in your best interest to provide the appraiser with all the useful information you can in order to insure that nothing of allowable value will be overlooked. If you are unable to meet with the appraiser, you may wish to have a person who is familiar with your property represent you.



How Soon Will The Agency Give Me A Written Purchase Offer?

Generally, this will depend on the amount of work required to appraise your property. In the case of a typical single-family house, it is usually possible for the public agency to make a written purchase offer within 45 to 90 days of the date it first notifies the owner of its intent to acquire his property.

The public agency must give you a written offer to acquire your property for the full amount it determines to be just compensation, and it must do so promptly after it determines that amount. Along with the offer you are to receive a written statement explaining the basis for the agency's determination of just compensation. No negotiations are to take place before you receive this statement and the written purchase offer.



What Is In The Agency's Statement Of The Basis For Its Determination Of Just Compensation?

The public agency's statement of the basis for its determination of just compensation must be provided to you with the written purchase offer. Among other things, this statement must include:

- An accurate description of the property to be acquired.
- A list of the improvements covered by the offer.
- The amount of the offer
- An indication that the offer does not reflect any relocation payments or other relocation assistance which you may receive under HUD regulations.
- The recognized definition of the term "fair market value" or the equivalent term in your State.
- The amount considered to be just compensation for each improvement which is owned by a tenant and the basis for determining that amount.

Must I Accept The Public Agency's Initial Offer?

No. You are entitled to present your evidence as to the amount you believe is the value of your property and to make suggestions for changing the terms and conditions of the offer. The public agency must make reasonable efforts to consider and respond to your evidence and suggestions. When fully justified by the available evidence of value, an adjustment in the offer price must be made.

May I Have Someone Represent Me During Negotiations?

Yes. If you would like an attorney or anyone else to represent you during negotiations, please so inform the public agency. However, Federal law does not require the agency to pay the costs of any such representation.

If I Agree To Accept The Public Agency's Offer, How Soon Will I Be Paid?

If you reach a voluntary agreement to sell your property and your ownership (title) is clear, payment will be made at a mutually acceptable time. Generally, this should be possible within 30 to 60 days after you sign a purchase contract. If the title evidence obtained by the public agency indicates that further action is necessary to show that your ownership is clear, you may be able to hasten the payment by helping the agency to obtain the necessary proof. (Title evidence is basically a legal record of the ownership of the property. It identifies the owners of record and lists the restrictive deed covenants and recorded mortgages, liens, and other instruments affecting your ownership of the property.)



What Happens If I Don't Agree To The Final Purchase Offer By The Public Agency?

If you are unable to reach a voluntary agreement through negotiations, the public agency may file a suit in court to acquire your property through an eminent domain proceeding. Eminent domain proceedings are often referred to as condemnations. If your property is to be acquired by condemnation and you would like it done promptly, the agency must file the condemnation suit without unreasonable delay.

During the condemnation proceeding, you will be provided an opportunity to introduce your evidence as to the value of your property. Of course, the public agency will have the same right. After hearing the evidence of all parties, the court will determine the amount of just compensation. If that amount exceeds the amount deposited by the public agency, you will be paid the difference, plus any interest that may be provided by State law.

To help you in presenting your case in a condemnation proceeding, you may wish to consider employing an attorney and an appraiser. However, in most States the costs of these professional services and other costs which an owner incurs in presenting his case to the court must be paid by him.

What Can I Do If I Am Not Satisfied With The Court's Determination?

If you are not satisfied with the court judgment, you may file an appeal with the appropriate appellate court for the area in which your property is located. The public agency may also file an appeal if it believes the amount of the judgment is too high.

What Happens After The Public Agency Condemns My Property?

You will be notified of the action. Condemnation procedures vary from State to State and you should inform yourself of the procedures in your area.

In most States, when a public agency files a condemnation suit, it must deposit with the court (or in an escrow account) an amount not less than its appraisal of the fair market value of the property Ordinarily, the owner is then permitted to withdraw this amount, less any amounts necessary to pay off any mortgage or other liens on the property and to resolve any special ownership problems. Your early withdrawal of your share of the money will not affect your right to seek additional compensation for your property.

Will I Have To Pay Any Settlement Costs?

You will be responsible for the payment of the balance on any mortgage on your property. Also, if your ownership is not clear, you may have to pay the cost of clearing it. But the public agency will not charge you any sales commission. And the public agency is responsible for all reasonable and necessary costs for:

- Typical legal and other services required to complete the sale, recording fees, revenue stamps, transfer taxes and any similar expenses which are incidental to transferring ownership to the public agency.
- Penalty costs and other charges necessary to permit prepayment of an earlier recorded mortgage on the property which was entered into in good faith.
- Real property taxes covering the period after the public agency acquires your property.

The public agency will identify these items in a Settlement Cost Statement to be given to you at the time of settlement or soon after the court award of compensation, if the property is acquired by condemnation. Ordinarily, if you have paid any of these expenses yourself, you will be repaid at that time. If you later discover other costs for which you should be repaid, you should request repayment from the public agency within six months after the acquisition. The public agency will assist you in filing a claim for these costs. Finally, if you believe that you were not properly repaid, you may appeal the public agency's decision — first to the public agency and, if not satisfied, then to HUD.

May I Keep Any Of The Buildings Or Other Improvements On My Property?

Very often, many or all of the improvements on a property are not required by the public agency. This might include such items as a fireplace mantel, your favorite shrubbery, or even an entire house. If you wish to keep any improvements, please let the public agency know as soon as possible.

If you do arrange to keep any improvement, the public agency will deduct only its salvage value from the purchase price you would otherwise receive. (The salvage value of an item is its probable selling price if offered for sale on the condition that the buyer will remove it at his own expense.) Of course, if you arrange to keep any real property improvement (such as a fireplace mantel or a shrub), you will not be entitled to receive a relocation payment for the cost of moving it to a new location.



Can A Public Agency Take Only A Part Of My Property?

Yes. But if the purchase of only a part of your property reduces the value of the remaining part (s), you must be paid for the loss in value. Also, if any remaining part would have little or no utility or value to you, the public agency must offer to buy that remaining part from you.

Occasionally, a public project will increase the value of a remaining part which is not acquired by the agency. In some States, when this occurs, the amount of the increase in value is deducted from the purchase price the owner would otherwise receive.

Will I Have To Pay Rent To The Public Agency After My Property Is Acquired?

If you remain in the property after acquisition, you may be required to pay a fair rent to the public agency. Generally, such rent will not be more than that charged as rent for the use of similar property in a similar area. The rent you may be required to pay for your home will not exceed 25% of your income.

How Soon Must I Move?

Every reasonable effort will be made to give you ample time to relocate after the acquisition of your property. In most cases a mutually satisfactory arrangement can be worked out. Also, except in an unusual instance where there is an urgent need for your property, you cannot be required to move from your residence or to move your business or farm operation without at least 90 days' advance written notice of the date by which your move is required

If you reach a voluntary agreement to sell your property, you cannot be required to move before you receive the agreed purchase price. In the case of a condemnation, you cannot be required to move before the estimated fair market value of the property has been deposited with the court so that you can withdraw your share.

If you are being displaced from your residence, decent, safe and sanitary replacement housing must be available before you can be required to move

What Is Title II Of The Uniform Act?

Title II (Uniform Relocation Assistance) of the Uniform Act specifies certain relocation payments and other assistance which a public agency must provide to families, individuals, businesses, farms, and nonprofit organizations when they are displaced or their personal property must be moved as a result of an activity which is subject to the Uniform Act.

The public agency must furnish you a full explanation of the relocation benefits to which you may be entitled. If you have any questions about these benefits, or your right to receive them, please contact the public agency or the HUD Area Office serving your community. In order that the public agency can fulfill its relocation obligations to you, you must keep the agency informed of your plans.

My Property Is Worth More Now Than When I Bought It. Must I Pay Capital Gains Tax On The Increase?

In most cases when a public agency acquires real property for public purposes, the property owner may postpone the payment of Federal capital gains taxes on any profit from the sale if he reinvests the profit in similar property within a certain replacement period. To take advantage of this right, you should file the details in a statement with your Federal income tax return for the tax year in which you realize the gain.

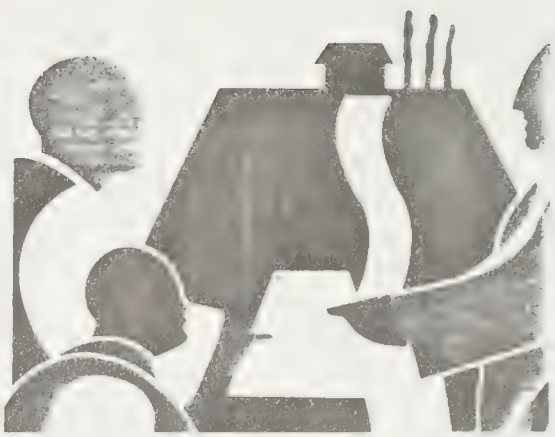
Internal Revenue Service (IRS) Publication 549, "Condemnations of Private Property for Public Use," is available from the IRS. It explains how the Federal income tax would apply to a gain or loss resulting from the condemnation of real property, or its sale under the threat of condemnation, for public purposes. If you have any questions about the IRS rules, you should discuss your particular circumstances with your personal tax advisor or your local IRS office.

I'm A Veteran. How About My GI Loan?

After your GI home mortgage loan has been repaid, you will be permitted to obtain another GI loan to purchase another property. Check on such arrangements with your nearest VA office.

Is It Possible To Donate Property To The Public Agency?

Yes. However, prior to accepting any donation of real property, the public agency must inform the owner in writing of the amount it believes to be just compensation for the property. The property owner must indicate in writing that, although he understands that he cannot be required to sell his property for less than just compensation, he voluntarily agrees to do so.



Where Can I Obtain A Full Description Of Federal Requirements Governing The Public Agency's Acquisition Of My Property?

The Department of Housing and Urban Development (HUD) regulations administering the Uniform Act are contained in Part 42 of Title 24 of the Code of Federal Regulations. A copy of these regulations may be obtained from the HUD Area Office serving your community.

The Department of Housing and Urban Development has a responsibility to see that the Uniform Act is carried out properly in HUD-assisted projects.

If your property is being acquired for a HUD-assisted project and you believe that you have not been treated fairly in accordance with the Uniform Act, you should advise the HUD office serving your community.

Kentucky, Louisville 40201
Children s Hospital Foundation Bldg
601 South Floyd Street
Post Office Box 1044

Mississippi, Jackson 39213
101-C Third Floor Jackson Mall
300 Woodrow Wilson Avenue. W

North Carolina, Greensboro 27401
415 N Edgeworth Street

South Carolina, Columbia 29201
1801 Main Street
Jefferson Square

Tennessee, Knoxville 37919
One Northshore Building
1111 Northshore Drive

REGION V

Illinois Indiana, Minnesota.
Michigan Ohio. Wisconsin

AREA OFFICES

Illinois, Chicago 60602
1 North Dearborn Street

Indiana, Indianapolis 46207
151 North Delaware Street
Post Office Box 7047

Michigan, Detroit 48226
Patrick V. McNamara
Federal Bldg
477 Michigan Ave

Minnesota, Minneapolis-St Paul
6400 France Avenue, South
Minneapolis, Minnesota 55435

Ohio, Columbus 43215
New Federal Building
200 North High Street

Wisconsin, Milwaukee 53203
744 North 4th Street

REGION VI

Arkansas. Louisiana
New Mexico. Oklahoma Texas

AREA OFFICES

Arkansas, Little Rock 72201
Suite 1400, One Union National Plaza

Louisiana, New Orleans 70113
Plaza Tower
1001 Howard Avenue

Oklahoma, Oklahoma City 73102
200 N W 5th Street

Texas, Dallas 75201
2001 Bryan Tower 4th Floor

Texas, San Antonio 78205
410 South Main Avenue
Post Office Box 9163

REGION VII

Kansas City. Missouri 64106
Iowa. Kansas. Missouri,
Nebraska

AREA OFFICES

Kansas, Kansas City 66101
Two Gateway Center
4th and State Streets

Missouri, St. Louis 63101
210 North 12th Street

Nebraska, Omaha 68106
Univac Building
7100 West Center Road

Region VIII (Regional/Area)

Executive Tower
1405 Curtis Street
Denver. Colorado 80202
Colorado. Montana. North Dakota
South Dakota Utah. Wyoming

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Section II

Environmental Requirements

PART 15—ADMINISTRATION OF THE CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

Subpart A—Administrative Requirements

Sec.
15.1 Purpose.
15.2 Administrative responsibility.
15.3 Definitions.
15.4 Agency responsibilities.
15.5 Exemptions.

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15.20 List of Violating Facilities.
15.21 Hearings.
15.22 Public participation.
15.23 Agency participation.
15.24 Investigation.
15.25 Referral to the Justice Department.

Subpart C—Ancillary Matters

15.40 Reports.
15.41 Delegation of Authority by the Director.

Subpart A—Administrative Requirements

§ 15.1 Purpose.

(a) The regulations in this Part are issued pursuant to the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), and Executive Order 11738, to provide certain prohibitions and requirements concerning the administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants, and loans. The regulations in this Part apply to all agencies in the Executive Branch of the Government which award contracts, grants, or loans. The regulations also apply to contractors and subcontractors and to recipients of funds under grants and loans to the extent set forth in this Part.

(b) The rights and remedies of the Government hereunder are not exclusive and do not affect rights and remedies provided elsewhere by law, regulation, or contract; neither do the regulations limit the exercise by the Administrator, Federal agencies, or other parties of powers not herein specifically set forth, but otherwise granted to them by the Air Act and the Water Act or the Order.

(c) The program provides for the establishment of a List of Violating Facilities which will reflect those ineligible for the award of a Federal contract, grant, or loan. Facilities will be listed upon a determination by EPA of continuing or recurring noncompliance with clean air or water standards. State, and local criminal convictions, civil adjudications, and administrative findings of noncompliance may serve as a basis for consideration of listing. In cases where a facility has been subjected to a State or local civil adjudication or administrative finding that such facility is in noncompliance with clean air or water standards, EPA shall consider listing at the request of the Governor. The program shall apply to any contract, grant, or loan in excess of $100,000, as well as any contract of a lesser amount involving a facility giving rise to a Federal criminal conviction.

§ 15.2 Administrative responsibility.

The Director, Office of Federal Activities, is hereby delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Administrator under the Order, except the power to issue rules and regulations, and provided that the Assistant Administrator for Enforcement, EPA, shall continue to exercise principal responsibility for EPA's enforcement of the Clean Air Act, the Federal Water Pollution Control Act, and clean air and water standards issued pursuant thereto. All correspondence regarding the Order or the regulations in this Part should be addressed to the Director, Office of Federal Activities, U.S. Environmental Protection Agency, Washington, D.C. 20460.

§ 15.3 Definitions.

(a) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604).

(b) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(c) The term "agency" means any department, agency, establishment, or instrumentality in the Executive Branch of the Federal Government, including wholly owned government corporations which award contracts, grants, or loans.

(d) The term "applicant" means any person who has applied but has not yet received a contract, grant, or loan and includes a bidder or proposer for a contract which is not yet awarded.

(e) The term "air pollution control agency" means any agency which is defined in section 302(b) or section 302(c) of the Air Act.

(f) The term "borrower" means a prime recipient of a loan.

(g) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or the Order, an applicable implementation plan as described in section 110(d) of the Air Act, an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act, or an approved implementation procedure under section 112(d) of the Air Act.

(h) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by EPA, or by a State under an approved program, as authorized by section 402 of the Water Act, or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act.

(i) The term "compliance" means compliance with clean air or water standards. For the purpose of these regulations, "compliance" shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water polution control agency, in accordance with the requirements of the Air or Water Act and regulations issued pursuant thereto.

(j) The term "contract" means any Federal contract for the procurement of personal property or non-personal services (including construction).

(k) The term "contractor" means the prime contractor with whom the Federal Government has contracted for procurement of personal property or non-personal services.

(l) The term "Director" means the Director, Office of Federal Activities, U.S. Environmental Protection Agency, or any person to whom he delegates authority under the regulations in this Part.

(m) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations owned, leased, or supervised by an applicant, contractor, subcontractor, grantee, subgrantee, borrower or subborrower to be utilized in the performance of a contract, grant, or loan. Where a location, or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility, except where the Director determines that independent facilities are co-located in one geographic area.

(n) The term "Governor" means the Governor or princpal executive officer of each State.

(o) The term "grant" means any Federal grant, including grant-in-aid (except where such assistance is solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq.).

(p) The term "grantee" means the prime recipient of a grant.

(q) The term "loan" means a loan of Federal funds.

(r) The term "Order" means Executive Order 11738, dated September 10, 1973 (38 FR 25161), which superseded Executive Order 11602, dated June 29, 1971 (36 FR 12475).

(s) The term "person" means any natural person, corporation, partnership, unincorporated association, State or local government, or any agency, instrumentality, or subdivision of such a government or any interstate body.

(t) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territories of the Pacific Islands.

(u) The term "subborrower" means any person holding a subloan.

(v) The term "subcontract" means any agreement or arrangement under which any portion of the contractor's obligation is performed, undertaken, or assumed.

(w) The term "subcontractor" means any person holding a subcontract.

(x) The term "subgrant" means any agreement or arrangement under which any portion of the activity or program which is being assisted under the grant is performed, undertaken, or assumed.

(y) The term "subgrantee" means any person holding a subgrant.

(z) The term "subloan" means any agreement or arrangement under which any portion of the business, program, or activity which is being assisted under the loan is performed, undertaken, or assumed.

(aa) The term "United States" as used herein includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

(bb) The term "Water Act" means Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500).

(cc) The term "water pollution control agency" means any agency which is defined in section 502(1) or section 502(2) of the Water Act.

§ 15.4 Agency responsibilities.

(a) *General.* Pursuant to the Order, each agency will take appropriate steps to ensure that all officers and employees whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the Order and the regulations under this Part. Such officers and employees will promptly report to the head of the agency or his designee any condition in any facility involved in a contract, grant, or loan made by an agency which may involve noncompliance with the clean air or water standards and which comes to their attention in the performance of their regular duties. The head of the agency or his designee will promptly transmit such reports to the Director. The Director shall take action as may be appropriate in accordance with §§ 15.24 and 15.20 of this Part.

(b) *Procurement, grant, and loan regulations.* Section 4 of the Order provides that agencies responsible for promulgating contract, grant, and loan regulations shall, following consultation with the Administrator, amend such regulations to require, as a condition of entering into, renewing, or extending any nonexempt contract, grant, or loan, compliance with the Air and Water Acts and standards issued pursuant thereto. Pursuant to the authorities vested in the Administrator in section 5 of the Order, agencies responsible for promulgating contract, grant, and loan regulations shall be governed by this Part. Such regulations shall be amended to require, no later than July 1, 1975, the use of the provisions set forth below.

(c) *Procurement regulations.* The Federal Procurement Regulations, Armed Services Procurement Regulation, and to the extent necessary, any supplemental or comparable regulations issued by any agency shall be amended to employ solicitation and contracts provisions which include the following requirements:

(1) A stipulation by the contractor or subcontractors that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA List of Violating Facilities pursuant to § 15.20 of this Part as of the date of contract award.

(2) Agreement by the contractor to comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder after the award of the contract.

(3) A stipulation that as a condition for the award of a contract the applicant or contractor shall notify the awarding official of the receipt of any communication from the Director indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities. Prompt notification shall be required prior to contract award.

(4) Agreement by the contractor that he will include or cause to be included the criteria and requirements in paragraphs (1) through (4) in every nonexempt subcontract and requiring that the contractor will take such action as the Government may direct as a means of enforcing such provisions.

(d) *Grant and loan provisions.* To carry out the purposes of the Air and Water Acts, the Order, and this Part, agency grant and loan regulations shall be amended as necessary to incorporate the requirements set forth in paragraphs (1) through (4) of § 15.4(c) above with respect to nonexempt transactions.

§ 15.5 Exemptions.

(a) *Exempted transactions.* (1) *Transactions $100,000 and under.* Contracts, subcontracts, grants, subgrants, loans, and subloans not exceeding $100,000 are exempt from this Part.

(2) *Contracts and subcontracts for indefinite quantities.* With respect to contracts and subcontracts for indefinite quantities (including but not limited to time and material contracts, requirements contracts, and basic ordering agreements), this Part shall be applicable unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed $100,000.

(3) *Assistance to abate, control, or prevent environmental pollution.* Any grant, subgrant, loan, or subloan, the principal purpose of which is to assist a facility or facilities to comply with any Federal, State, or local law, regulation, limitation, guideline, standard, or other requirement relating to the abatement, control, or prevention of environmental pollution is exempt from this Part.

(4) *Exclusion.* The foregoing exemptions shall not apply to a proposed contractor whose facility is listed on the basis of § 15.20(a)(1) (i) and (iv). Utilization of such a facility through the award of a Federal contract is barred by section 306(a) of the Air Act and section 508(a) of the Water Act where a conviction has been obtained pursuant to section 113(c)(1) of the Air Act and section 309(c) of the Water Act.

(b) *Authority of heads of agencies.* Where a head of an agency determines that the paramount interest of the United States so requires, he may exempt any individual contract, subcontract, grant, subgrant, loan, or subloan for a period of one year, and by rule or regulation any class of contracts, grants, or loans. In the case of an individual exemption, the head of the agency granting the exemption shall notify the Director as soon before or after granting the exemption as practicable. The justification for such an exemption or any renewal thereof shall fully describe the purpose of the contract, grant, or loan and shall indicate the manner in which the paramount interest of the United States requires that the exemption be made.

(c) *Facilities located outside the United States.* This Part shall not apply to the use of facilities located outside the United States.

Subpart B—Remedies

§ 15.20 List of Violating Facilities.

(a) *Listing of facilities.* Sections 1, 4, 5, and 7 of the Order, section 306 of the Air Act, and section 508 of the Water Act require the Administrator to establish procedures which will identify for Federal agencies those facilities giving rise to a criminal conviction under the Air and Water Acts and which will establish sanctions and penalties necessary to assure that contracts, grants, and loans are not awarded to applicants whose facilities are found to be in noncompliance with clean air and water standards. The Director shall maintain the List of Violating Facilities in accordance with the following procedures:

(1) *Basis for consideration of listing.* Federal, State, or local criminal convictions, civil adjudications, or administrative findings of noncompliance may serve as the basis for consideration of listing facilities. However, the listing of a facility based on a State or local civil adjudication or administrative finding shall not be considered unless the Governor of the State has referred the applicant, contractor, grantee, or borrower whose facility has given rise to such adjudication or finding to the Director in accordance with § 15.23 of this Part. The following Federal, State, and local determinations may serve as bases for listing:

(i) Facilities which have given rise to a conviction under section 113(c)(1) of the Air Act.

(ii) Facilities which have given rise to any injunction, order, judgment, decree, or other form of civil ruling by a Federal, State, or local court issued as a result

of noncompliance with clean air standards, or facilities which have given rise to a conviction in a State or local court for noncompliance with clean air standards.

(iii) Facilities not in compliance with an order under section 113(a) of the Air Act, or which have given rise to the initiation of court action under section 113(b) of the Air Act, or have been subjected to equivalent State or local proceedings to enforce clean air standards.

(iv) Facilities which have given rise to a conviction under section 309(c) of the Water Act.

(v) Facilities which have given rise to any injunction, order, judgment, decree, or other form of civil ruling by a Federal State, or local court issued as a result of noncompliance with clean water standards, or facilities which have given rise to a conviction in a State or local court for noncompliance with clean water standards.

(vi) Facilities not in compliance with an order under section 309(a) of the Water Act, or which have given rise to the initiation of court action under section 309(b) of the Water Act, or have been subjected to equivalent State or local proceedings to enforce clean water standards.

(2) *Listing proceedings.* No facility shall be listed until there has been notification to the owner, and where appropriate, the operator, by the Director of his intent to place the facility on the List and the basis therefor, and the representatives of the facility have been afforded an opportunity to confer with the Director and present orally or in writing, and with assistance of counsel, data or information relating to the proposed placement of the facility on the List. Prior to listing on the basis of § 15.20(a)(1) (ii), (iii), (v), or (vi) the Director must determine that there is adequate evidence of continuing or recurring noncompliance with clean air or water standards at the facility. Upon request from the Assistant Administrator for Enforcement, EPA, the Director shall defer listing of a facility. The Director's determination to list shall be in writing and shall summarize the basis for his action.

(3) *The List.* Upon carrying out the aforesaid requirements, the Director may list a facility. The list shall be distributed periodically to all agencies and published in the FEDERAL REGISTER. The List shall contain as a minimum the name of each person whose noncomplying facility has given rise to the listing, the name of such facility, the basis for the listing, and the date for each listing.

(4) *Effective date.* The Director shall initiate the maintenance of the List of Violating Facilities where such listing is determined based on § 15.20(a)(1) (i) or (iv) effective immediately. The Director shall intiate the maintenance of the List of Violating Facilities where such listing is determined based on § 15.20(a)(1) (ii), (iii), (v), (vi) effective July 1, 1975.

(b) *Prohibition of award to listed facilities.* No agency shall enter into, renew, or extend any nonexempt contract, subcontract, grant, subgrant, loan, or subloan where a facility listed would be utilized for the contract, subcontract, grant, subgrant, loan, or subloan.

(c) *Removal of facility from List.* If a conviction, order, judgment, decree, other form of civil ruling, or finding which has constituted the basis for consideration of listing a facility is reversed or otherwise modified to remove such basis, or if the Assistant Administrator for Enforcement, EPA requests removal, the facility shall be removed promptly from such listing by the Director effective upon receipt of notification of the reversal, modification, or request. Requests for removal of facilities from the List for any other basis including a request from a Governor shall be addressed to the Director. Such request shall be in writing and must contain appropriate evidence that the condition which gave rise to the listing has been corrected. Alternatively, for facilities listed under §§ 15.20(a)(1) (ii), (iii), (v), and (vi) above, the written request to de-list may be based upon an approved plan of compliance which will ensure the condition which gave rise to the listing will be corrected. Facilities listed on the basis of § 15.20(a)(1) (ii) and (vi) shall be removed from the List one year after the initial date of the listing unless the Director determines theretofore that a basis for listing under § 15.20(a)(1) (i), (ii), (iv), or (v) has been established. In the event the request for removal is denied, a hearing pursuant to § 15.21 shall be granted by the Director, if requested within ten (10) days of receipt of a notice of denial.

§ 15.21 Hearings.

(a) Hearings held pursuant to § 15.20 (c) shall be conducted by a hearing officer designated by the Administrator. Each party shall have the right of counsel and a fair opportunity to present evidence and argument and to cross-examine. The agency or official responsible for clean air or water standards enforcement with respect to the listed facility will be permitted to participate in the hearing. The hearing officer shall base his decision solely upon the record before him.

(b) The decision of the hearing officer shall be final unless within twenty (20) days from the date of receipt of the decision the party adversely affected requests in writing a review by the Administrator.

§ 15.22 Public participation.

(a) Persons who wish to bring an alleged failure of compliance with clean air or water standards under this Part to the attention of the Government should file a statement in writing with the Director, Office of Federal Activities, U.S. Environmental Protection Agency, Washington, D.C. 20460.

(b) The statement should include the name, address, and telephone number of the person responsible for its filing, the name and address or other accurate description of the facility allegedly in noncompliance, a description of the noncompliance, with any available accompanying data considered to show that the noncompliance has occurred, and any other pertinent information which will assist in the investigation and resolution of the reported noncompliance. The statement must be signed by the person responsible for the filing or his authorized representative.

(c) The Director shall review the statement and within a reasonable period advise the person of the disposition of his statement.

(d) No action under this section shall satisfy the service of notice of intent to file suit requirement pursuant to section 304 of the Air Act or section 505 of the Water Act.

§ 15.23 Agency participation.

(a) *Federal agency participation.* Pursuant to § 15.4 (c) and (d) of this Part, applicants must indicate whether a facility to be utilized in the performance of any nonexempt contract, grant, or loan has been identified by the Director as under consideration for listing. Federal contracting officers or awarding officials must determine whether any facility to be utilized in the performance of a nonexempt contract, grant, or loan appears on the List distributed by the Director under § 15.20 of this Part. If such facility has been identified by the Director but the facility does not appear on the List, the contracting officer or awarding officials shall promptly notify the Director. In accordance with § 15.24 of this Part, the Director may request that the award of the contract, grant, or loan be withheld for a period not to exceed fifteen (15) working days pending completion of an appropriate investigation.

(b) *State participation.* If a Governor determines that a facility is in continuing or recurring noncompliance with clean air or water standards, the Governor may notify the Director. The Director shall take the necessary steps, under § 15.20 of this Part, to determine whether listing shall occur.

§ 15.24 Investigation.

(a) When pursuant to § 15.23 of this Part, Federal contracting officers or awarding officials notify the Director that a facility contemplated to be utilized in the performance of a contract, grant, or loan has been identified by EPA as under consideration for listing, the Director after consultation with the agency whose proposed contract, grant, or loan is involved, may request that the award of the contract, grant, or loan be withheld for a period not to exceed fifteen (15) working days effective the date the Director, as well as the interested Federal agency, is notified of the existence of such information and the initiation of the investigation. The agency shall withhold such award except when it is determined that the delay is likely to prejudice the agency's programs or otherwise seriously disadvantage the

Government. Prompt notice shall be given to the Director in any case where such determination to award has been made.

(b) The Director shall promptly inform the agency whose contract, grant, or loan is involved of the findings, dispositions, or actions resulting from the investigation. Where the information causing the investigation was presented by a private individual or Governor, that individual or Governor shall also be promptly notified.

§ 15.25 Referral to the Justice Department.

The Administrator may recommend that appropriate legal proceedings or other action be taken in reference to the requirements set forth in the regulations contained in this Part. Referrals of any matters arising under such regulations to the Department of Justice shall be made only by the Administrator or with his express approval.

Subpart C—Ancillary Matters

§ 15.40 Reports.

(a) *Agency reports.* The head of each agency shall ensure that the Administrator is informed of each exemption granted under § 15.5(b) during the preceding fiscal year annually before August 1.

(b) *EPA reports.* (1) The Administrator will annually repo to the President on measures taken toward implementation of section 306 of the Air Act, section 508 of the Water Act, the Order, and regulations in this Part, including but not limited to the progress and problems associated with such implementation.

(2) The Administrator will annually notify the President and the Congress of all exemptions granted or in effect under this Part during the preceding year.

§ 15.41 Delegation of Authority by the Director.

The Director is authorized to redelegate the authority conferred upon him by this Part.

[FR Doc.75-9803 Filed 4-15-75;8:45 am]

AN
ENVIRONMENTAL
ASSESSMENT TECHNIQUE

Key Issues And Questions

For Consideration

In Each Impact Category



A Guide For

Community Development Block Grant Recipients

GRANTEE/RECIPIENT:

GRANT NUMBER:

CHIEF EXECUTIVE OFFICER:

CERTIFYING OFFICER/NAME-TITLE:

PROJECT NAME:

PROJECT SUMMARY

PROJECT DATA

FUNDING-CDBG: $ OTHER: $

PROJECT AND AREA DESCRIPTION:

PURPOSE OF THE PROJECT:

STATUS OF THE PROJECT:

EXISTING ENVIRONMENTAL CONDITIONS AND TRENDS

CONSIDERATION OF OTHER APPLICABLE LAWS AND AUTHORITIES

Project, (name and number of project), undertaken by (name of CDBG recipient), has been determined to be categorically excluded from an environmental assessment in accordance with the National Environmental Policy Act (NEPA). This exclusion does not relieve the recipient of compliance with other applicable program requirements set forth in 24 CFR Part 58, Environmental Review Procedures for Title I Community Development Block Grant Programs.

This format records the consideration of the criteria, standards, policies, and statutes set forth in 24 CFR Part 58.5 as follows:

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) as amended; particularly section 106 (16 U.S.C. 470f).

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 *et seq.*); particularly section 2(c).

(3) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 *et seq.*); particularly section 3 (16 U.S.C. 469a–1); as amended by the Archeological and Historic Preservation Act of 1974.

(b) *Floodplain management and wetland protection.* (1) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*)as amended; particularly sections 102(a) and 202(a) (42 U.S.C. 4012a(a) and 4106(a)).

(2) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 *et seq.*); particularly section 2(a).

(3) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 *et seq.*); particularly sections 2 and 5.

(c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) as amended; particularly section 307 (c) and (d) (16 U.S.C. 1456 (c) and (d)).

NOT APPLICABLE IN HUD REGION VIII

(d) *Sole source aquifers.* The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e) (42 U.S.C. 300h–303(e)).

(e) *Endangered species.* The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended; particularly Section 7 (16 U.S.C. 1536).

(f) *Wild and scenic rivers.* The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended; particularly section 7 (b) and (c) (16 U.S.C. 1278 (b) and (c)).

(g) *Air quality.* The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended; particularly section 176 (c) and (d) (42 U.S.C. 7506 (c) and (d)).

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(h) *HUD environmental standards* (24 CFR Part 51, Environmental Criteria and Standards (44 FR 40860–40866, July 12, 1979).

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The recipient has compared the project with the above cited authorities and:

|___| The issues noted require a more complete assessment.

|___| No significant issues were identified; a Notice of Intent to Request a Release of Funds (NOI/RROF) and a Request for Release of Funds (RROF) is attached.

|___| None of the laws or authorities cited above were found relevant to the project. The project has therefore been determined to be exempt under 24 CFR Part 58.34a(10).

PREPARED BY _____ ***DATE*** _____

Conformance With Comprehensive Plans and Zoning

Assessment Questions

1. Is the proposal consistent with completed components of the local or regional comprehensive plan, whether adopted or in draft stage? Is there a relevant state plan and is the proposal consistent?

2. Is the proposed project consistent with other plans including those prepared by areawide planning agencies, special districts and boards and state agencies in various functional areas?

3. Is the proposed project consistent with adopted community or areawide policies and goals?

4. Does the proposed project comply with existing zoning and subdivision regulations? If not, does the proposal require a zoning variance?

Slope

Assessment Questions

1. Does the proposal call for development on a steep slope and, if so, does its design plan include measures to overcome potential erosion, slope stability and runoff problems?

2. Does the county, local or site-specific soil survey mention that slopes are unstable for any of the soils on the site?

3. Is there a history of slope failure in the project area environs?

4. Is there visual indication of previous slides or slumps in the project area, such as cracked walls or tilted trees or fences?

Compatibility and Urban Impact

Assessment Questions

1. What are the existing land uses adjacent to the proposed project. Do the abutters and neighbors think the proposed project will be incompatible with existing uses?

2. Will the project have an adverse effect on the economy of a core city area? Will it contribute to urban sprawl? Will it displace economic activity from a central business district?

3. Will the proposed project result in induced development which will alter existing land use or which will be incompatible with the existing scale and density of development? Are the changes which will result from any induced development regarded by the community as beneficial or negative?

4. Does the proposed project contribute to reducing the racial, ethnic and income segregation of the area's housing?

Erosion

Assessment Questions

1. Does the project involve development of an erosion sensitive area (near water, on a steep slope, on a sandy or silty soil)? If so, is erosion control included as part of the plan?

2. Does the proposed project create slopes by cut and fill?

3. Does site clearance require vegetation removal? How many acres will be cleared and for how long?

4. Is there evidence of erosion or sedimentation?

Soil Suitability

Assessment Questions

1. Is there any visible evidence of soil problems--foundation cracking or settling, basement flooding, etc.--in the neighborhood of the project site?

2. Have soil borings been made for the area? Do they indicate marginal or unsatisfactory soil conditions?

3. If the answer to either of the above questions is yes and the proposed project involves either new construction or very substantial rehabilitation activities, does the project design include appropriate mitigation measures to address the problem of poor soil conditions?

Energy Consumption

Assessment Questions

1. Does the location of the site have any special energy related advantages or disadvantages? Can these be maximized or overcome?

2. Have the architectural plans taken full advantage of potential energy saving measures, such as insulation, window design and placement, lighting, heating, cooling and hot water systems? Are they in conformance with HUD Minimum Property Standards and other applicable energy saving codes?

3. Is the location of the project in close proximity to transit, shopping, services and employment locations?

Hazards, Nuisances and Site Safety

Site Hazards: Shadows, inadequate street lighting, uncontrolled access to lakes and streams, improperly screened drains or cachment areas, steep stairs or walks, overgrown brush, lack of access for emergency vehicles, hazardous waste dumps, uranium mill tailings used as foundation or building material, radioactive reclaimed phosphate land, facilities handling chemicals and/or petrochemicals of an explosive or fire prone nature.

Traffic: circulation conflicts, road safety, exposure to radiation or toxic substances

Natural Hazards

Climatic: wind, droughts, floods, lightning, hurricanes, tornadoes, hail and snowstorms

Geological: erosion, landslides, volcanoes, earthquakes

Biological: infestations, allergies, bacterial, viral and fungal diseases

Assessment Questions

1. Does the project involve any of the potential hazards listed above? Any that are not listed including hazards created by project construction, operation and design as well as those existing on and near the site?

2. Are there project users or neighboring populations whose special health and safety needs are not anticipated in the project design? Have actions been taken to protect children from "attractive nuisances?" Have measures been taken to reduce the potential risk to the elderly from dust and temporary walkways and traffic around construction sites?

Noise Assessment Questions

Refer to the HUD Noise Assessment Guidelines to respond to the following assessment question:

1. Given the existing ambient noise and estimated future noise levels of the site, is the site appropriate for the proposed activities and facilities? Will the project be exposed to noise levels which exceed HUD's (or state or local) noise standards? If there is a potential noise problem, what kinds of mitigation measures are proposed for the project?

Air Quality Assessment Questions

1. Does the project require an installation permit, operating permit or indirect source permit under local pollution control agency rules? If so, have permit requirements been satisfied?

2. Is the project located in the vicinity of a monitoring station where air quality violations have been registered? If so, will the project exacerbate air quality problems in the area?

3. If the project or its potential users would be particularly sensitive to existing air pollution levels, or those expected 10 and 20 years hence, has the project been designed to mitigate possible adverse effects?

4. Will the proposal establish a trend which, if continued, may lead to violation of air quality standards in the future?

5. Will the proposed project have parking facilities for 1,000 cars (inside an SMSA) or 2,000 cars (outside an SMSA) or generate traffic of a corresponding magnitude?

Visual Quality— Coherence, Diversity, Compatible Use, and Scale Assessment Questions

1. Physical Alteration: Will there be demonstrable destruction or physical alteration of the natural or man-made environment? (For example, will there be clearance of trees or buildings, substantial regrading or alteration of the vegetative character or geomorphic form of the land? While alteration of the existing landscape is often negative, it can also provide opportunities to improve areas already disrupted by man—e.g., land may be regraded to prevent contaminated surface waters from flowing into a stream or pond, at the same time as creating a more varied landscape.)

2. Nonconformity with the Existing Environment: Will there be intrusion of elements out of character or scale with existing physical environment? Does the proposed building represent a significant change in size, scale, (i.e., unrelated size or spacing of windows, floor levels, entrance patterns), placement or height in relation to neighboring structures in an inappropriate manner? Does it differ in materials, color or style from its neighbors in an inappropriate manner?

   Are proposed signs and street furniture in character with the existing architectural styles, particularly in historic areas? Are levels of activity reduced or detrimentally increased?

3. Will the proposed structure block views or degrade them, change the skyline or create a new focal point? Is objectionable visual pollution introduced directly or indirectly due to loading docks, trash collectors, parking? Is this mitigated visually?

Visual Quality

4. Disruption of the Ambient Environment: Will there be interference with or impairment of ambient (or existing background) conditions necessary for the enjoyment of the physical environment? (For example, increased ambient levels of air and noise pollution, vibration, dust, odor, heat and glare can seriously interfere with human health and the experience of natural conditions. These increases may also promote the deterioration of vegetation, wildlife habitats, and historic buildings.)

Demographic/Community Character Changes

Assessment Questions

1. What is/are the identifiable community(ies) within the sphere of likely impact of the proposed project? What are the factors which contribute to the character of the community(ies)?

2. Will the proposed project significantly alter the demographic characteristics of the community?

3. Will the proposed project result in physical barriers or difficult access which will isolate a particular neighborhood or population group, making access to local services, facilities and institutions or other parts of the city more difficult?

4. Will the proposed project severely alter residential, commercial or industrial uses?

5. Will the proposed project destroy or harm any community institution, such as a neighborhood church?

Historic, Cultural, and Archaeological Resources Assessment Questions

1. Does the project area and environs contain any properties listed on the National Register of Historic Places? Does the locality have an inventory of historic places?

2. Is there a local historic commission that can provide historic information? What information on the project area does the State Historic Preservation Office (SHPO) have and has a survey of local historic properties been conducted?

3. Are there other properties within the boundaries or in the vicinity of the project that appear to be historic and thus require consultation with the SHPO as to eligibility for the National Register?

4. If so, can the applicant prepare documentation that reflects consultations with the SHPO as to what appears to be eligible for the National Register, whether effected or not by the project?

5. Has the Department of the Interior been requested to make a determination of eligibility on properties the community or SHPO deems eligible and affected by the project?

6. Has the Advisory Council on Historic Preservation been given an opportunity to comment on properties that are listed on or have been found eligible for the National Register and which would be affected by the project?

7. Does the Advisory Council response indicate that a Memorandum of Agreement is needed to avoid or reduce affects?

8. If so, has the Advisory Council's "106 Process" been completed, or does the applicant contemplate completing the process after applying for HUD funds but prior to requesting the re-

Displacement

Assessment Questions

1. Will the project directly displace individuals or families? How many persons? Is the displacement covered by the Uniform Relocation Act and are funds available for payments?

2. Will the project destroy or relocate existing jobs, community facilities or any business establishments? Is the displacement covered by the Uniform Relocation Act and are funds available for payments?

3. Are relocation funds available for families or individuals who may be directly displaced?

4. Will identifiable groups be affected--older persons, females, single-parent families, racial/ethnic, or income groups, or minority group members?

5. Are replacement facilities or housing units available within the community or in nearby neighborhoods? What will be the effect of relocation on these neighborhoods?

6. Will the project result in probable indirect displacement? If so, have measures been planned to alleviate the hardship on those affected whose displacement is not covered under the Act?

Employment and Income Patterns

Assessment Questions

1. Will the project either significantly increase or decrease employment opportunities? Will it create conditions favorable or unfavorable to commercial, industrial, or institutional operation or development?

2. How many temporary and how many permanent jobs will be created by the project?

3. What is the profile of new jobs created by the project? What is the distribution across the skills and income scale? How do these relate to the skills and income profile of project area residents?

4. Will the new jobs likely go to area residents, to lower income, unemployed and minority group members? Will construction jobs likely go to union or non-union workers?

5. Where are the new employees likely to come from (i.e., inner city, suburb, outside SMSA)?

Educational Facilities

Assessment Questions

1. Will the additional school age children in the proposed development exceed the capacity of existing or planned school facilities?

2. Does the potentially affected school(s) have adequate and safe access facilities (i.e., walking paths, bus routes, crosswalks and guards) given any calculations done for projected population increase? Are these adequate both in terms of safety and access?

3. Will additional or alternative facilities have to be provided to ensure safety and suitable access?

4. What measures will be taken by the superintendent or school's governing body to resolve potential problems/ conflicts?

Commercial Facilities

Assessment Questions

1. Is there adequate and convenient access to retail services? In the case of elderly, this means that shopping for such essential items as food and medicine is within three blocks and services such as banks and other convenience shopping are within walking distance.

2. Do local retail services meet the needs of project occupants/users? Are they affordable and is the range of services adequate?

3. Will existing retail and commercial services be adversely impacted by the proposed project? Will existing businesses be placed at a competitive disadvantage or be displaced?

Health Care

Assessment Questions

1. Are non-emergency health care services located within a reasonable proximity to the proposed project, i.e., less than a half-hour's drive or commute away? (In dense urban areas an even shorter time period may set the standard.)

2. Is emergency health service available within approximately three to five minutes? Such service can often be provided by police and fire personnel as well as by ambulance staff.

3. Can ambulance trips to a hospital or other health care center be made within 10 to 15 minutes?

4. Is the number of doctors, dentists, nurses and other trained medical staff in realistic proportion to any increase in residents/users? If not, can provision be made for additional skilled staff?

5. Will project residents/users require special medical services or skills such as geriatric clinics?

6. Will the local comprehensive health planning agency be contacted in the event that an increase in population from a proposed development causes a situation of increased or over capacity for area health care services? Consult the local area health systems agency to determine an estimate of number of hospital beds and other facilities needed. If over capacity is anticipated, the local comprehensive health planning agency should be approached for possible alternative plans.

Social Services Assessment Questions

1. Are social services currently located in close proximity to the prospective users/residents? Are they within walking distance or convenient to public transportation and less than one-half hour's commute?

2. Is the number of trained staff including social workers, counselors, psychologists, psychiatrists and related administrative and managerial personnel in realistic proportion to the anticipated increase in residents/users? If not, could provision readily be made for additional skilled staff?

3. Will the demand for the social services increase and overburden existing facilities, can provision be made to obtain alternative and/or additional space?

Waste Water Assessment Questions

1. Will existing or planned waste water systems adequately service the proposed development?

2. As a result of the project, will the design capacity of these facilities be exceeded?

3. Will the proposed project be adversely affected by proximity to these facilities?

4. In less developed areas, are soils suitable for on-site wastewater disposal such as septic systems?

5. Where on-site disposal is necessary, will the state or local health agency issue a permit?

Solid Waste Assessment Questions

1. Will the existing or planned solid waste disposal system adequately service the proposed development?

2. As a result of the project, will the design capacity of these facilities be exceeded?

3. Will the proposed project be adversely affected by proximity to these facilities?

4. Does the community have an adequate number of vehicles to provide the project with collection service?

5. Will the residents/users of proposed project have to pay annual/monthly costs for these services? Will these costs create severe financial hardships for project residents? (This can be a real consideration if low income or elderly are primary user

Storm Water Assessment Questions

1. Will existing or planned storm water disposal and treatment systems adequately service the proposed development?

2. Will the project overload the design capacity of these facilities?

3. Will the proposed project be adversely affected by proximity to these facilities?

Water Supply

Assessment Questions

1. Will either the municipal water utility or on-site water supply system be adequate to serve the proposed project?

2. Is the water supply quality safe from a chemical and bacteriological standpoint?

Public Safety—Police, Fire, and Emergency Medical

Assessment Questions

1. Does the project location provide adequate access to police, fire and emergency medical services? Does the project design provide easy access for emergency vehicles and individuals? Are there obstacles to access, such as one-way roads, narrow bridges, waterways, expressways, and railroads which would prohibit access in an emergency situation? Will the project create such obstacles?

2. Is the quality of the police and fire protection services available to the project adequate to meet project needs?

3. Does the area have a particularly high crime rate? Are there special plans for a security system which have been approved by the police department? Is the architectural configuration of the development such that it is easily patrolled by police from the street?

4. Will the project create a burden on existing facilities in terms of manpower and/or equipment? Can services either be expanded or be provided by the project, such as an in-house security force?

Open Space, Recreation, and Cultural Facilities

Assessment Questions

1. Are open space, recreational and cultural facilities within reasonable proximity (i.e., walking distance) to the project area? Is adequate public transportation available from the project to these facilities? (Note: Small children and elderly persons need such facilities to be in very close proximity to their residences.)

2. Is there an adequate supply of these resources for the users or resident population of the development?

3. Will the CDBG project cause any overloading of existing facilities?

4. Are the special needs of certain population groups able to be satisfied, such as small children or the elderly and handicapped? For example, are there tot lots for very small children, playgrounds for elementary school children, drop-in centers for senior citizens and ball fields for teenagers.

5. If the development is housing, has space for informal play for children of all ages been included on-site? Have areas for recreation for adults and the elderly been provided including places for passive recreation?

Transportation Assessment Questions

1. Will transportation facilities and services be adequate to meet the needs of the project's users? Is off-street parking available and adequate? Is adequate public transportation available?

2. Are there special transportation issues (programs for the elderly and handicapped, bridge clearances for trucks, emergency vehicle access) which have not been adequately provided for?

3. Will the project serve to reduce the mobility of any group?

4. Will the project encourage additional private vehicle trips and increase energy consumption?

5. Will the users of the project be encouraged to use both auto and public transit?

6. Will the project create any safety hazards? For example, have curbs been designed with wheelchair ramps, have pedestrian activated signal lights or pedestrian overpasses been included in plans where needed? Is traffic light timing adequate for elderly pedestrians?

7. Will the project be provided with an adequate level of transportation service? Will it overload existing or proposed transportation services or conversely, create a situation whereby facilities are seriously underused?

8. Have special parking spaces been designated for exclusive use by the handicapped?

Water Resources Assessment Questions

Ground Water

1. Is the site subject to rapid water withdrawal problems which change the depth or character of the water table, affect water supply, and/or vegetation?

2. Will the project use groundwater for its water supply?

3. Are there a large number of wells, or wells that pump large quantities of water from the water table near the proposed project site?

4. Will a lowered water table require deep pumping for water?

5. Are septic systems being used?

6. Is there a large variance in the water table elevation? A high seasonal water table can prevent proper functioning of septic tank drain fields.

7. Have septic disposal systems been properly designed, installed and maintained to prevent effluent from contaminating groundwater supplies?

8. Is there impact on a sole source aquifer?

Water Resources

Surface Water

9. Are there visual or other indications of water quality problems on or near the site?

10. Will the project involve discharge of sewage effluent into surface water bodies? If so, will it meet state, Federal and other applicable standards?

11. Will the project involve a substantial increase in impervious surface area, and, if so, have runoff control measures been included in the design?

12. Will the project affect surface water flows or water levels in ponds as a result of excessive groundwater well pumping?

Wetlands Protection

Assessment Questions

1. Does the proposed CDBG project have the potential to affect or be affected by a wetland?

2. Is the project in compliance with Executive Order 11990 and implementing HUD procedures when issued in 24 CFR Part 55?

3. Are there available alternatives to locating the project or activity in the wetland?

4. Is the proposed project or activity subject to compliance with Federally-approved State Coastal Zone Management Plans?

5. Is the proposed project or activity in compliance with conditions set forth by the U.S. Army Corps of Engineers concerning permits for dredge and fill activity?

Floodplain Management

Assessment Questions

The most important questions to ask when conducting the initial flood hazard screening are:

- Will the project be located in the 100-year floodplain?

- Will the project change the 100-year floodplain, or affect the floodway? (The floodway is the portion of the floodplain that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot at any point.)

- Are there available alternatives to locating the proposed project or activity in the floodplain?

- Is the proposed project in compliance with Executive Order 11988 and implementing HUD procedures in 24 CFR Part 55 (when issued)?

- Is the proposed project or activity subject to compliance with the Federally-approved State Coastal Zone Management Plans?

- Is the proposed project or activity in compliance with conditions set forth by the U.S. Army Corps of Engineers concerning permits for dredge and fill activity?

Unique Natural Features and Agricultural Lands

Assessment Questions

1. Will the proposed project location, construction, or activities of project users adversely impact unique natural features on or near the site?

2. Will the project either destroy or isolate from public or scientific access the unique natural feature?

3. Will the unique feature pose safety hazards for a proposed development?

4. Will the proposed project use or affect important and productive farmland?

Vegetation and Animal Life

Vegetation Assessment Questions

The first two questions deal with <u>disruption</u>; the last two deal with <u>alteration of habitat</u>.

1. Will the project damage or destroy existing remnant plant communities, especially rare or endangered species?

2. Will it damage or destroy trees without replacement and landscaping?

3. Will the project create environmental conditions which might threaten the survival of existing vegetation, particularly changes in the native plant community habitats?

4. Will it create conditions favorable to nuisance species?

Animal Life Assessment Questions

The assessment questions on animal life encompass the following five topics: disruption, habitat alteration or removal, endangered species, pest species and game species.

1. Will the project create special hazards for animal life? What types of animals will be affected and how?

2. Will the project damage or destroy existing wildlife habitats?

3. Will the project threaten any animal species listed by either state or Federal fish and wildlife agencies?

4. Will the project damage game fish habitats or spawning grounds?

5. Will the project create conditions favorable to the proliferation of pest species?

6. Will excessive grading alter the groundwater level and thus cause the slow death of trees and ground cover which in turn destroys animal habitat?

LIMITATIONS ON CERTAIN FEDERAL ASSISTANCE

SEC. 176. (a) The Administrator shall not approve any projects or award any grants authorized by this Act and the Secretary of Transportation shall not approve any projects or award any grants under title 23, United States Code, other than for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance, in any air quality control region—

(1) in which any national primary ambient air quality standard has not been attained.

(2) where transportation control measures are necessary for the attainment of such standard, and

(3) where the Administrator finds after July 1, 1979, that the Governor has not submitted an implementation plan which considers each of the elements required by section 172 or that reasonable efforts toward submitting such an implementation plan are not being made (or, after July 1, 1982, in the case of an implementation plan revision required under section 172 to be submitted before July 1, 1982).

(b) In any area in which the State or, as the case may be, the general purpose local government or governments or any regional agency designated by such general purpose local governments for such purpose, is not implementing any requirement of an approved or promulgated plan under section 110, including any requirement for a revised implementation plan under this part, the Administrator shall not make any grants under this Act.

(c) No department, agency, or instrumentality of the Federal Government shall (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve, any activity which does not conform to a plan after it has been approved or promulgated under section 110. No metropolitan planning organization designated under section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under section 110. The assurance of conformity to such a plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality.

IMPLEMENTATION PLANS

SEC. 110. (a) (1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

AREAWIDE WASTE TREATMENT MANAGEMENT

SEC. 208. (a) For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans—

(1) The Administrator, within ninety days after the date of enactment of this Act and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation with appropriate elected and other officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization, including elected officials from local governments or their designees, capable of developing effective areawide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such area.

(4) If a Governor does not act, either by designating or determining not to make a designation under paragraph (2) of this subsection, within the time required by such paragraph, or if, in the case of an interstate area, the Governors of the States involved do not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within an area may by agreement designate (A) the boundaries for such an area, and (B) a single representative organization including elected officials from such local governments, or their designees, capable of developing an areawide waste treatment management plan for such area.

(5) Exiting regional agencies may be designated under paragraphs (2), (3), and (4) of this subsection.

(6) The State shall act as a planning agency for all portions of such State which are not designated under paragraphs (2), (3), or (4) of this subsection.

(7) Designations under this subsection shall be subject to the approval of the Administrator.

(b)(1)(A) Not later than one year after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 201 of this Act. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all wastes generated within the area involved. The initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than two years after the planning process is in operation.

(B) For any agency designated after 1975 under subsection (a) of this section and for all portions of a State for which the State is required to act as the planning agency in accordance with subsection (a)(6), the initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than three years after the receipt of the initial grant award authorized under subsection (f) of this section.

(2) Any plan prepared under such process shall include, but not be limited to—

(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works, *and an identification of open space and recreation opportunities that can be expected to result from improved water quality, including consideration of potential use of lands associated with treatment works and increased access to water-based recreation*;

(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

(C) the establishment of a regulatory program to—

(i) implement the waste treatment management requirements of section 201(c),

(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and

(iii) assure that any industrial or commercial waste discharged into any treatment works in such area meet applicable pretreatment requirements;

(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

(F) a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including *return flows from irrigated agriculture, and their cumulative effects*, runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(G) a process of (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

(J) a process to control the disposition of all residual waste generated in such area which could affect water quality; and

(K) a process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

PART 39—COST-EFFECTIVE ENERGY CONSERVATION AND EFFECTIVENESS STANDARDS

Sec.

39.1 Title and purpose.
39.3 Authority
39.5 Scope.
39.7 Standards.
Appendix I Cost-Effective Energy Efficiency (Conservation) Standards for Rehabilitation of Residential Properties

§ 39.1 Title and purpose.

The purpose of this Part is to set foirth cost-effective energy conservation and efficiency standards applicable to HUD programs.

§ 39.3 Authority.

This Part implements the provisions of the Housing and Community Development Amendments of 1978. 42 U.S.C. 1425(b), et seq., Pub. L. 95–557.

§ 39.5 Scope.

The standards apply to the following programs:

(a) Rehabilitation loans under Section 312 of the Housing Act of 1964.

(b) Rehabilitation loans under Section 203(k) of the National Housing Act.

(c) Operating assistance for troubled multifamily housing projects under Section 201 of the Housing and Community Development Amendments of 1978.

(b) Financial assistance for substantial rehabilitation projects under Section 8 of the United States Housing Act of 1937.

(e) Financial assistance for moderate rehabilitation projects under Section 8 of the United States Housing Act of 1937.

§ 39.7 Standards.

The standards are set forth in detail in the Appendix to this Part.

Appendix

Cost-Effective Energy Efficiency (conservation) Standards for Rehabilitation of Residential Properties

A–1. *General.* (a) These standards provide the mandatory levels of various energy-efficiency features that are considered as cost-effective in the rehabilitation of residential properties. The material is arranged to give consideration to local climatic conditions and fuel prices in determining the measures to be used.

(b) It is realized that not all of the requirements can be followed in all situations due to existing building conditions and funds available.

A–2. *Application.* (a) It is the intent of these standards to apply only to those improvements proposed as part of the rehabilitation, except those listed in A–3 below. If new material or construction is contemplated, conformance to these standards is mandatory for these features.

(b) It is not the intent to require thermal improvement of construction elements which would not ordinarily be made accessible or become exposed during the rehabilitation.

(c) The requirements contained herein must be applied judiciously. Any one or more of the requirements may be eliminated to the extent they are not practical in rehabilitation situations, considering economic feasibility, program needs and the materials and type of construction involved. (Example: The use of the following Tables for a structure of 1500 square feet located in an area of 4200 degree days with a fuel cost of 4 cents per Kwh for electricity, would require R–30 ceiling insulation for certain programs. If the structure presently had no ceiling insualtion, the savings in fuel cost would be approximately $1000 per year after adding the R–30 insulation. However, if the present ceiling contained R–19 insulation, improvement to R–30 would result in an annual reduction in fuel cost of only $170.) The reduced operating cost must be weighed against the amortization cost for the improvements to determine cost-effectiveness for the specific program terms. (The energy estimating methods contained in Chapter 43 of the 1976 Systems Handbook of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. were used in preparing the above comparison.)

A–3. *Additional Criteria.* (a) In addition to the measures shown in the Tables, the following shall apply to those structures which are not subjected to the energy audit procedures described in (b) below: (1) Doors and windows shall be weatherstripped to reduce infiltration of air when weatherstripping is inadequate or nonexistent.

(2) Caulk, gasket, or otherwise seal all openings, cracks, or joints in the building envelope when existing materials are inadequate. Replace all loose or brittle caulking with new elastomeric material. Leave bottom edge of siding uncaulked to allow moisture drainage.

(3) Replacement heating, ventilating and airconditioning (HVAC) system supply and return pipes and ducts shall be insulated whenever they run through unconditioned spaces. Pipe insulation shall be R–2 or greater, and duct insulation shall be R–4 or greater. Duct seams shall be tightly sealed to reduce air leakage.

(4) Replacement heating systems, burners and airconditioning systems shall be of high-efficiency design, and should be carefully sized to be no greater than 15% oversize for the critical design, hearing or cooling, except to satisfy the manufacturers' next closest nominal size.

(b) For mid-rise and high-rise structures and for many low-rise multifamily projects an energy audit must be carried out to identify and specify the energy and cost savings which are estimated to result from installing or accomplishing an energy conservation measure. All measures determined to be cost-effective, given the loan time and rate and in accordance with paragraph A–2 shall be accomplished. Amortization cost of improvements must be offset by reduced operating costs attributable to the improvements. Generally, assistance in conducting energy audits is available through local supplies, energy officials and utility companies. The energy audit shall cover all of the following energy conservation measures, to the degree feasible, except those that are not appropriate for the building types or equipment:

Installation of individual utility meters or checkmeters
Ceiling insulation
Insulation of hot water and steam pipes
Insulation of heating and cooling ducts in unheated spaces
Caulking and sealants in building joints
Weatherstripping doors and windows
Clock thermostats for units with individual heating units
Storm windows or replacement of single glazed windows with double glazed windows
Flow restrictors for hot water lines to shower heads or faucets
Thermostatic radiator valves
Replacement of incandescent fixtures in public spaces with higher efficiency lighting
Exterior insulation for water heaters located in unheated spaces
Improved burners, controls, capacitors and other improvements to mechanical systems which will lower fuel consumption or energy costs

A–4. *Use of Table 1.* In order to use the recommendations shown in Table 3, the Heating Index must be determined from Table 2. If the structure is mechanically cooled, the Cooling Index must also be selected from Table 2. In order to choose a Heating Index and a Cooling Index from Table 2 it is necessary to identify the appropriate reference column number. Table 1 presents those column reference

numbers. At the top of Table 1 are unit prices for oil, gas, and electricity (electricity prices apply to resistance electric heating and air conditioning only) expressed in cents per gallon, per therm, and per Kwh respectively. The costs used in choosing the proper reference column number should be the marginal cost—the cost of the last unit of fuel purchased in the heating or cooling season—and should include all taxes and fuel adjustment charges. Choose reference column numbers for the Heating Index by selecting the reference number directly below the fuel costs in the row representing the financing terms to be used. Similarly select a Cooling Index reference column by noting the number in the row of the applicable financing terms that is directly below the unit price of cooling energy. When fuel costs exceed those shown in the Table, use the last column on the right of the Table.

A-5. *Table 2—Selection of Heating and Cooling Indices.* At the top of Table 2 are column reference numbers. Along the left side of Table 2 are Degree Days for heating and Cooling Hours for cooling. The Heating Index is derived by reading down the correct reference column and across for the applicable Degree Day entry. The point of convergence indicates the Heating Index. The reference column for cooling and the Cooling Hours are used in the same manner to determine the Cooling Index.

A-6. *Table 3—Selection of Recommended Measures.* The levels of protection are determined by reading horizontally across the Table from the Heating Index shown on the left side of the Table. For ceiling insulation the applicable Colling Index column must be used with the appropriate Heating Index. If mechanical cooling is not contemplated, use the column for Cooling Index 1.

Table 1

FUEL PRICES AND REFERENCE COLUMNS FOR HEATING AND COOLING INDICES

	FUEL PRICES										
Oil (c/Gallon)	29	33	37	42	46	51	55	64	73	82	91
Gas (c/Therm)	23	26	29	33	36	40	43	51	58	65	72
Electricity (c/Kwh)	1.6	1.8	2	2.3	2.5	2.8	3.0	3.5	4.0	4.5	5

(1) FINANCING TERMS

	REFERENCE COLUMNS										
15 yrs @ 11 1/2 % or 10 yrs @ 5%	1	2	2	3	4	5	5	6	7	8	8
30 yrs @ 9 1/2% or 40 yrs @ 9 1/2%	1	2	3	4	5	6	7	8	9	10	11
20 yrs @ 6% or 40 yrs @ 7 1/2% or 40 yrs @ 8%	1	2	3	5	6	7	8	9	10	11	11
20 yrs @ 3%	1	3	4	6	7	9	10	11	11	11	11

(1) To determine the appropriate Reference Column for financing terms with rates or terms not shown, interpolate between the above Reference Columns. Use next higher reference column if interpolation yields a result between columns.

Table 2
HEATING AND COOLING INDICES

REFERENCE COLUMN	1	2	3	4	5	6	7	8	9	10	11

HEATING INDEX

DEGREE DAYS (1)											
500 - 1500	A										
1501 - 2500											
2501 - 3500			B								
3501 - 4500											
4501 - 5500					C						
5501 - 6500						D					
6501 - 7500											
7501 - 8500							E				
8501 - 9500								F			
9501 and above										G	

COOLING INDEX

COOLING HOURS (1)											
100											
300		1									
500											
700											
900				2							
1100											
1300						3					
1500											
1700							4				
2000								5			
2200										6	
2500											

(1) Degree Day and Cooling Hour information is available in the ASHRAE Systems Handbook, from local weather stations and from local utility companies.

TABLE 3
INSULATION: R VALUES

Heating Index	CEILINGS(1) Cooling Index 1	2	3	4	5	6	WALL (2) (3)	FLOOR Over Unheated Spaces	GLASS No. of Layers	STORM DOOR OR THERMAL DOOR
A	R-19								1	No
B		R-26					R-11 to R-13	0	1	No
C				R-30				R-11	2	No
D					R-38				2	No
E									3(5)	No(6)
F							(4) R-13		3(5)	No(6)
G								R-19	3(5)	Yes(7)

Notes to Table 3

(1) The addition of insulation to ceilings which presently contain insulation may not be cost-effective. If the additional insulation needed to conform to the recommendations is less than R-19, benefits are doubtful. (See example in A-2(c).)

(2) For frame construction, the R value of sheathing may be included in the insulation R value of walls.

(3) Required only when wall covering, interior or exterior, is removed and an adequate vapor barrier is applied. (When the existing wall contains any amount of insulation, additional insulation applied by blowing or pouring is not recommended.)

(4) Extra insulation, up to R-19, is recommended where practicable under the conditions of Note (3) above.

(5) Three layers of glass not typically cost-effective unless existing windows are double glazed or complete replacement of sash is contemplated. If replacing sash, should have insulating frames.

(6) Storm doors or thermal doors recommended if primary door is hollow-core or is over 25 percent glass.

(7) Applicable only to individual living unit doors opening directly to the exterior.

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THE ENDANGERED SPECIES ACT OF 1973

P.L. 93-205 (87 Stat. 884)

including the amendments of:

June 30, 1976	P.L. 94-325 (90 Stat. 724)
July 12, 1976	P.L. 94-359 (90 Stat. 911)
December 19, 1977	P.L. 95-212 (91 Stat. 1493)
November 10, 1978	P.L. 95-632 (92 Stat. 3751)

FINDINGS, PURPOSES, AND POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) POLICY.—It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

INTERAGENCY COOPERATION

SEC. 7 (a) CONSULTATION.—The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

(b) SECRETARY'S OPINION.—Consultation under subsection (a) with respect to any agency action shall be concluded within 90 days after the date on which initiated or within such other period of time as is mutually agreeable to the Federal agency and the Secretary. Promptly after the conclusion of consultation, the Secretary shall provide to the Federal agency concerned a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. The Secretary shall suggest those reasonable and prudent altneratives which he believes would avoid jeopardizing the continued existence of any endangered or threatened species or adversely modifying the critical habitat of such species, and which can be taken by the Federal agency or the permit or license applicant in implementing the agency action.

(c) BIOLOGICAL ASSESSMENT.—To facilitate compliance with the requirements of subsection (a), each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

SUMMARY OF KEY PROVISIONS

ENDANGERED SPECIES ACT OF 1973

I. Scope of the Act.

A. All plants and animals are covered except insects determined by the Secretary of Interior to be pests dangerous to man.

B. An endangered species is one that is in danger of extinction throughout all or a portion of its range.

C. A threatened species is one likely to become endangered within the foreseeable future in all or a significant portion of its range.

D. A species so similar to a threatened or endangered species as to present substantial difficulty in distinguishing the two may also be listed as endangered or threatened.

II. The Secretary is directed to list endangered or threatened species by regulation if the species are threatened or endangered by any of five factors.

A. Present or threatened destruction of habitat.

B. Overutilization.

C. Disease or predation.

D. Inadequacy of existing regulatory mechanisms.

E. Other natural or manmade factors affecting its continued existence.

III. Self Implementing Control Mechanisms.

A. All Federal agencies must utilize their authority to implement the purposes of the ESA.

B. All agencies are prohibited from taking actions that jeopardize the continued existence of the threatened or endangered species or result in the destruction or modification of critical habitats.

C. The taking, import, export, possession, or sale of any endangered fish or wildlife is prohibited.

D. The import, export, possession, or sale of any endangered plant is prohibited.

IV. Some Provisions are to be Implemented by Regulation.

A. Acquisition of land by the Secretary.

B. Enter into cooperative agreements and management agreements with states.

1. States with such agreements are entitled to two-thirds of their funding from the Fish and Wildlife Service. An amendment has been passed by Congress and is awaiting signature of the President which would raise this funding level to three-quarters.

2. States with regulations sufficient to trigger approval of cooperative agreements assume control of threatened species and the Federal Government surrenders control even to the extent that Federal Fish and Wildlife Service representatives must secure state permits for taking of threatened species.

V. Enforcement.

A. The Fish and Wildlife Service is authorized to issue permits for taking of endangered or threatened species for scientific purposes or to enhance the propogation of survival of the species.

B. ESA provides civil penalties for knowing violation of ESA or regulations thereunder.

C. ESA provides criminal penalties for willful violation of ESA or regulations thereunder.

D. Any citizen may file suit against the Secretary or any alleged violator of the ESA or its regulations after sixty days notice of violation.

Missouri

Mammals: Gray bat (Myotis grisescens)
Indiana bat (Myotis sodalis)

Birds: American peregrine falcon (Falco peregrinus anatum)
Arctic peregrine falcon (Falco peregrinus tundrius)
Bald eagle (Haliaeetus leucocephalus)
*Eskimo curlew (Numenius borealis)

Clams: Curtis' pearly mussel (Epioblasma florentina curtisi)
Fat pocketbook pearly mussel (Potamilus capax)
Higgin's eye pearly mussel (Lampsilis higginsi)

Montana

Mammals: Black-footed ferret (Mustela nigripes)
Gray wolf (Canis lupus)
Grizzly bear (T) (Ursus arctos horribilis)

Birds: American peregrine falcon (Falco peregrinus anatum)
Arctic peregrine falcon (Falco peregrinus tundrius)
Bald eagle (Haliaeetus leucocephalus)
*Eskimo curlew (Numenius borealis)
Whooping crane (Grus americana)

Nebraska

Mammals: Black-footed ferret (Mustela nigripes)

Birds: American peregrine falcon (Falco peregrinus anatum)
Arctic peregrine falcon (Falco peregrinus tundrius)
Bald eagle (Haliaeetus leucocephalus)
*Eskimo curlew (Numenius borealis)
Whooping crane (Grus americana)

(T) = Threatened; all others Endangered

* The Eskimo curlew formerly migrated through the Great Plains area in the spring, but none have been seen in this area for many years. Recent sightings are all from the Gulf Coast, Caribbean area, and Canada.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 58

[Docket No. R-82-969]

Environmental Review Procedures for Title I Community Development Block Grant Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule is designed to replace the regulations issued by HUD on August 2, 1979. The new rule sets forth the enviromental regulations applicable to the Title I block grant programs of the Department as authorized and amended under the Housing and Community Development (HCD) Amendments of 1979 and 1981. The purpose of Part 58 is to implement the procedure reauthorized by the 1981 Amendments and redesignated as section 104(f), Title I, of the HCD Act of 1974, as amended, under which block grant recipients and States may assume the environmental responsibilities of the Secretary. The new interim rule would:

(1) Constitute the Department's compliance with the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality.

(2) Provide the means by which Title I block grant projects would be carried out in accordance with NEPA and other provisions of Federal law specified by the Secretary.

The new interim rule is further designed to meet the deregulatory objectives of the Department in conformance with Executive Order 12291.

DATES: *Effective date:* Upon expiration of first period of 30 calendar days of continuous sessions of Congress after publication, subject to waiver. Further notice of the effectiveness of this interim rule will be published in the Federal Register.

Comment due date: June 11, 1982.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. The interim rule may be changed on the basis of comments received.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Environment and Energy, Room 5136, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, D.C. 20410. Telephone: 202/755-7894. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The new interim rule provides the means by which the NEPA regulations of the Council on Environmental Quality are made applicable to all eligible activities and projects under the Title I programs of HUD. The uniform procedures, terminology and requirements prescribed to all Federal agencies in 40 CFR Parts 1500 through 1508 are incorporated by reference in the interim rule.

The interim rule implements the provisions of section 104(f) of Title I of the HCD Act of 1974 (as amended in 1979 and 1981). This section of Title I authorizes a procedure for the assumption by grant recipients of all the responsibilities of the Secretary for environmental review, decisionmaking and actions not only under NEPA, but also under other provisions of law which further the purposes of NEPA. The regulations specify the related laws and authorities applicable to Title I projects. The revised interim rule also contains numerous changes in terminology, particularly "applicant" to "recipient". The revised rule provides, in addition, the regulatory material for the devolution of environmental responsibilities upon States which are administering the nonentitlement small cities CDBG program. These latter changes are required by the 1981 legislative amendments.

Interim Rule Actions To Reduce Regulatory Burden

The amendments developed for this interim rule have taken into account the deregulation objectives of the Department to reduce the burden of the current interim regulations on block grant recipients by:

1. Substantially reducing the text of the 1979 interim regulations through: (a) The deletion of hortatory provisions and operational guidelines such as those contained in § 58.14 of the 1979 rule; (b) deletion of the Federal Register EIS notice requirements; (c) elimination of regulatory material quoted from the CEQ Regulations or otherwise contained in the program regulations under 24 CFR Part 570 (e.g. the urban renewal closeout provisions of former §58.20).

2. Limiting the regulations to those requirements needed to supplement and adapt the procedural provisions of the NEPA regulations to the special circumstances of block grant projects and to ensure that the environmental responsibilities of the Secretary under NEPA and related laws are fully met.

3. Clarifying those specific regulations required by law and simplifying supplementary technical guidance originally contained in the interim rule.

4. Emphasizing the mechanisms and procedures designed in the NEPA regulations to reduce paper work, eliminate duplication and otherwise simplify the environmental review process (e.g. adoption and re-use of prior environmental impact statements, aggregation of functionally or geographically related activities into one environmental review document).

5. Revising thresholds for Environmental Impact Statements to provide a single uniform threshold of 2,500 dwelling units (or equivalent), thereby eliminating this threshold requirement for most cities. Greater reliance is placed on the simpler environmental assessment process.

6. Reclassifying eight groups of activities categorically excluded under the 1979 regulations and exempting them from the environmental requirements of NEPA and of related Federal laws.

Public comment and suggestions are invited on these measures for consideration in the preparation of the final rule.

Applicability to Title I Programs

The environmental review procedures contained in the interim rule apply to grants, loans, loan guarantees and other forms of HUD assistance in connection with eligible activities and projects under all Title I programs as follows:

1. Basic CDBG entitlement grants program;

2. Single purpose and comprehensive grants within the Small Cities program funded by HUD;

3. Grants to States which elect to administer CDBG nonentitlement funds for small cities;

4. The Urban Development Action Grants;

5. Categorical program settlement grants;

6. Grants under the Secretary's discretionary CDBG fund (unless the activities to be so funded are exempt by law), including the basic and comprehensive block grants for Indian Tribes; and

7. Section 108 Guarantee of Loans.

HUD Actions on Public Comments

Following the publication of the interim rule of 1979, nine respondents including one Federal agency and a HUD program office, four local agencies involved in CDBG programs and a County organization submitted comments which related mainly to the organization and integration of the new NEPA Regulation requirements. The Federal agency recommended the addition of the NEPA Regulation's uniform terminology for "significant" actions. All definitions of the NEPA Regulations have been adopted by reference in new § 58.20. Four CDBG agencies and a membership organization of counties strongly recommended the further consolidation of environmental assessment requirements and the EIS procedures. Taking these suggestions into account, the new interim rule has consolidated the steps for environmental assessment into the new Subparts F and G while those for the EIS process are incorporated in Subparts H and I. Wherever practicable and desirable, brief descriptions of the NEPA requirements cited have been provided, bearing in mind the need to reduce the bulk of regulatory material. The balance of comments received were requests for further clarifying the technical provisions of the regulations. These changes are further discussed in what follows:

New Interim Rule Actions Since the 1979 Regulations

In response to the statutory amendments and to comments received, including requests for further clarification and explanation of the procedures established in the 1979 regulations and, based on informal expressions of need for additional guidance as a result of the experience of the past two years, the following actions have been taken and are reflected in the new interim rule:

1. Adoption in the rule of a new option which allows a recipient to combine into one notice the contents of two public notices: the notice of finding of no significant impact and the public notice of intent to request release of funds. This was requested by a substantial number of comments addressed to the 1979 regulations. These requirements and conditions relative to the exercise of [illegible] make it clear that the public comment period prescribed for the finding of no significant impact must have elapsed before the actual request for release of funds and the recipient's certification can be submitted to HUD (new § 58.43).

2. Addition of new provisions to the environmental assessment clearance requirements with respect to exceptional circumstances which may require the extension of minimum time requirements for public comment (new § 58.46), or which allow the posting of public notices in U.S. post offices for localities not regularly served by local newspapers (new § 58.43). Also added to this section (new § 58.43) are the publication and dissemination requirements for a grant recipient's public notices.

3. Reorganization and consolidation of the environmental impact statement procedure into two subparts (Subparts H and I) as suggested by a majority of the comments received. Similarly, the Environmental Assessment requirements have been consolidated into Subpart F with Subpart G providing for their coordination with related Federal laws and authorities.

4. Additional guidance for the preparation of Environmental Impact Statements (EIS's). The NEPA Regulations (40 CFR Part 1502) are adopted by reference and made a part of this interim rule.

5. Clarification of the conditions under which the requirements for environmental impact statements may be extended or reduced (§ 58.63). Also provided is a procedure to be followed by recipients in emergency situation for actions which, under normal circumstances, could require the preparation of EIS's (§ 58.33).

6. Adoption of a procedure for the preparation of Supplemental EIS's (§ 58.64). The new interim rule consolidates this procedure with the other EIS requirements under Subpart I.

7. Incorporation of the CEQ Regulation provisions for a "record of decision" (§ 58.65).

8. Clarification of the circumstances under which prior EIS's may be re-used (§ 58.33); new procedures to be followed where environmental assessments have to be amended (§ 58.47); and provisions pursuant to the NEPA regulations for the adoption by Title I recipients of EIS's prepared by Federal agencies and other Title I recipients, thus avoiding duplication (§ 58.52).

9. Adoption in the rule of the classification of Title I activities which are exempt (§ 58.34) or are listed as categorical exclusions (§ 58.35).

10. Addition of a new Subpart C [illegible] responsibilities of States which elect to administer the CDBG program for nonentitlement cities under the HCD Act [illegible] and 104(f) of Title I).

11. Amendments which substitute a single threshold of 2,500 dwelling units for the sliding scale numerical threshold contained in the 1979 interim rule. The built-in environmental safeguards of the former sliding scale can be realized by a recipient's prior determination, based on available environmental information, of the level of clearance which would be appropriate for a particular project. This simplification can further reduce the unnecessary burden of preparing an EIS just because the numercial threshold is exceeded. For such projects where the Title I recipient determines that significant environmental impacts are unlikely, Part 58 provides that this determination must be verified by preparing an environmental assessment (EA) instead of an EIS.

On August 12, 1981, the Presidential Task Force on Regulatory Relief designated HUD regulations governing environmental procedures for review pursuant to section 3(i) of Executive Order 12291. This interim rule revising Part 58 is part of the Department's ongoing effort, under that review, to make the environmental regulations more flexible and less burdensome.

This rule is a critical element in the Department's implementation of those portions of the Housing and Community Development Amendments of 1981 which provide for State operation of the Small Cities program. Because the existing interim rule does not provide for the assumption of environmental review responsibilities by local recipients receiving grant funds from States, or for the performance by States of responsibilities currently vested in the Secretary, it is essential that these environmental procedures become effective as soon as possible. Accordingly, the Department finds that prior notice and public comment are impracticable and contrary to the public interest and that good cause exists for making this rule effective without a prior comment period. However, the Department is providing a 60-day period for public comment following publication. All relevant comments and suggestions will be considered in the [illegible] a final rule on this subject.

Accordingly, this regulation is being published as an interim rule to become effective at the earliest date permitted by law. The Secretary has determined that, for the reasons stated above, good cause exists for exempting the interim rule from the 30-day delay in effectiveness provided in Administrative Procedure Act, 5 U.S.C. 553(d). However, section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)) provides

for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs.

The Secretary has requested the appropriate waivers by the Chairmen and Ranking Minority Members but, at the time of publication of this interim rule, it is not know whether or when such waivers will be granted. Under section 7(o)(5) of the Department of HUD Act, "Congressional inaction on any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved." The foregoing provision refers to inaction on joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, and the principle that such inaction does not imply Congressional approval applies, *a fortiori*, to a waiver of the nature requested by the Secretary.

Under any circumstances, further notice of the effective date of this interim rule will be published in the **Federal Register**.

A Finding of No Significant Impact with respect to the environment has been made in accordance with 24 CFR Part 50 which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 5218, 451 Seventh Street, SW., Washington, D.C. 20410.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The cost for carrying out the environmental responsibilities specified by this Rule is an eligible cost funded by Title I block grant programs under 24 CFR Parts 570 and 571 (§ 570.206(h) and § 571.206(h)). Financial assistance for environmental reviews is further confirmed in § 58.23 of this rule.

This rule was listed as Item C)18.CPD–21–81 and D)2.CPD–23–81 under the Office of Community Planning and Development in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41728) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The programs affected by this rule and their program number in the Catalog of Federal Domestic Assistance are as follows:

—CDBG Entitlement, 14.218;
—HUD-administered Nonentitlement Cities, 14.219;
—UDAG, 14.221;
—Indian Tribes, 14.223;
—Territories, 14.225;
—Special Projects, 14.226;
—Technical Assistance, 14.227; and
—State-administered program for Nonentitlement Cities, 14.228.

List of Subjects in 24 CFR Part 58

Community development block grants, Environmental impact statements.

Accordingly, this rule revises 24 CFR Part 58 to read as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

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58.77 Effect of approval of certification.
58.78—58.79 [Reserved]

Authority—Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Section 104(f) of Title I, Housing and Community Development Act,of 1974 (42 U.S.C. 5304(f)) as amended; Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) as amended; Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

§ 58.1 Purpose and applicability.

(a) *Purpose.* These regulations implement the requirements of section 104(f) of the Housing and Community Development Act of 1974, as amended, supplement the National Environmental Policy Act Regulations (40 CFR Parts 1500–1508) of the Council on Environmental Quality, and provide for the compliance of Title I projects with related Federal laws and authorities.

(b) *Applicability.* This Part applies to activities and projects funded by HUD assistance under all Title I Community Development Block Grant programs.

§ 58.2 Terms, abbreviations and definitions.

(a) For the purposes of this Part, the following definitions shall supplement the uniform terminology provided in 40 CFR Part 1508:

(1) *Activity.* The term "activity" means both those actions funded or authorized to be funded with Title I assistance and those related actions which are not so funded or not authorized but which a recipient puts forth as part of its block grant project. It is not the source of funds for an activity, but the nature of the activity and its relationship to other activities, which is relevant. Where the term "eligible activity" is used in this Part, it means an activity which is eligible for Title I assistance pursuant to 24 CFR Parts 570 and 571.

(2) *Recipient or grant recipient.* The term "recipient" or "grant recipient" means State or unit of general local government and other eligible entitlement, nonentitlement (including UDAG) recipients of Title I grants, loans or loan guarantees under the CDBG program. In instances where units of general local government receive nonentitlement grants from States pursuant to section 106(d) of Title I, the term "recipient" or "grant recipient" means the recipient unit of general local government. One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State, unit of general local government or Indian tribe to undertake a community development program in whole or in part.

(3) *Project.* The term "project" means an activity, or a group of integrally related activities, designed by the grant recipient to accomplish, in whole or in part, a specific goal.

(4) *State.* With no modifying word or designation, the term "State" refers to the State agency administering the Small Cities program under section 106(d) of the Act.

(5) *Urban renewal project.* The term "urban renewal project" means a project as defined in section 110(c) of the Housing Act of 1949, as amended, or a neighborhood development program as defined in section 131(b) of the Housing Act of 1949, as amended.

(b) In addition, the following abbreviations are used throughout the Part:

HUD—Department of Housing and Urban Development
CDBG—Title I of the Housing and Community Development Act of 1974 as amended
NEPA—National Environmental Policy Act
CEQ—Council on Environmental Quality
EA—Environmental Assessment
EIS—Environmental Impact Statement
FONSI—Finding of No Significant Impact
ERR—Environmental Review Record
NOI/EIS—Notice of Intent to Prepare an EIS
ROD—Record of Decision
ROF—Release of Funds
RROF—Request for Release of Funds
NOI/RROF—Notice of Intent to Request Release of Funds
SOA—Statement of Activities
UDAG—Urban Development Action Grants

§ 58.3 Environmental policy authority—basic law.

NEPA (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*) establishes national policy, goals, and procedures for protecting, restoring and enhancing environmental quality. NEPA is implemented by Executive Order 11514 of March 5, 1970, as amended by Executive Order 11991 of May 24, 1977, and by CEQ's NEPA Regulations, 40 CFR Parts 1500–1508 (43 FR 55978–56007, November 28, 1978).

§ 58.4 HUD [illegible] authority.

(a) *Statutory basis.* These regulations are issued pursuant to section 104(f), Title I, of the *Housing and Community Development Act of 1974* (42 U.S.C. 5301 *et seq.;* hereinafter "the Act" or "Title I"), as amended by section 103(g) of the *Housing and Community Development Amendments of 1978* (Pub. L. 95-128) and as amended by section 302(e) of the *Housing and Community Development Amendments of 1981* (Pub. L. 97–35).

(b) *Assumption authority for [illegible] grant recipients: general.* Except as otherwise provided by paragraph (c) of this section, grant recipients are authorized to assume, for particular CDBG projects, the responsibilities for environmental review, decision-making, and other action which would otherwise apply to the Secretary, under NEPA and other provisions of law which further the purposes of NEPA, in accordance with section 104(f) of Title I. Grant recipients, other than units of general local government receiving nonentitlement grants from any State, assume such responsibilities by execution of their grant agreement with HUD. Under the States' Program, the States shall provide for appropriate procedures by which grant recipients under such program will evidence their assumption of such responsibilities.

(c) *State-administered Small Cities Program: special provisions.* (1) *Assumption authority for units of general local government*—Units of general local government receiving nonentitlement grants from any State administering the Small Cities program pursuant to section 106(d) of Title I are authorized to assume the responsibilities set forth in paragraph (b) of this section.

(2) *Responsibilities of the States.* States which elect to administer the Small Cities program pursuant to section 106(d) of Title I, shall perform the actions set forth in Subpart J with respect to approval of requests for release of funds and certifications required under this Part from the Small Cities units of general local government that they have satisfied the environmental requirements of this Part. By execution of its grant agreement with HUD, the State agrees to discharge its responsibilities under section 104(f)(2) of the Act in accordance with the requirements of this Part (including, in particular, Subpart J). The State's approval of this certification is deemed to satisfy the Secretary's responsibilities under NEPA and other provisions of law specified in § 58.5 of this Part.

§ 58.5 Federal laws and authorities.

Pursuant to section 104(f), a grant recipient's assumption of the responsibility for environmental review, decisionmaking and action includes such responsibilities under the provisions of law listed below. The responsibility which the recipient assumes under Title I is in addition to whatever other responsibilities the recipient may have to comply with local, State and Federal environmental laws or authorities. Before committing any Title I funds (other than for activities exempt under § 58.34), the recipient must certify

that it has complied with the requirements and obligations which would apply to HUD under the following laws and authorities; furthermore, in undertaking its environmental review, decisionmaking and action pursuant to NEPA, the recipient must take into account, where applicable, the criteria, standards, policies and regulations of such laws and authorities:

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) as amended; particularly section 106 (16 U.S.C. 470f).

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 *et seq.*); particularly section 2(c).

(3) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 *et seq.*); particularly section 3 (16 U.S.C. 469a–1); as amended by the Archeological and Historic Preservation Act of 1974.

(b) *Floodplain management and wetland protection.* (1) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*)as amended; particularly sections 102(a) and 202(a) (42 U.S.C. 4012a(a) and 4106(a)).

(2) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 *et seq.*); particularly section 2(a).

(3) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 *et seq.*); particularly sections 2 and 5.

(c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) as amended; particularly section 307 (c) and (d) (16 U.S.C. 1456 (c) and (d)).

(d) *Sole source aquifers.* The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e) (42 U.S.C. 300h–303(e)).

(e) *Endangered species.* The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended; particularly Section 7 (16 U.S.C. 1536).

(f) *Wild and scenic rivers.* The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended; particularly section 7 (b) and (c) (16 U.S.C. 1278 (b) and (c)).

(g) *Air quality.* The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended; particularly section 176 (c) and (d) (42 U.S.C. 7506 (c) and (d)).

(h) *HUD environmental standards* (24 CFR Part 51, Environmental Criteria and Standards (44 FR 40860–40866, July 12, 1979).

§ 58.6–58.9 [Reserved]

Subpart B—General Policy: Responsibilities of Grant Recipients

§ 58.10 Basic environmental responsibility.

In accordance with section 104(f) of Title I, the grant recipient must assume the responsibility for carrying out all its Title I projects in accordance with the procedural provisions of NEPA and the CEQ regulations (40 CFR Parts 1500–1508), as well as the procedures set forth in this Part. In addition, the recipient must make sure that projects are in compliance with the applicable provisions and requirements of the Federal laws and authorities specified in § 58.5.

§ 58.11 Legal capacity.

A recipient which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this Part, should contact the appropriate HUD Area Office or the State for further instructions. Determinations of legal capacity will be made on a case by case basis.

§ 58.12 Technical and administrative capacity.

The recipient must develop the technical and administrative capability necessary to comply with 40 CFR Parts 1500–1508 and the procedures of this Part.

§ 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required pursuant to § 58.71, a grant recipient's Certifying Officer is the "responsible Federal official" as that term is used in section 102 of NEPA and section 104(f) of Title I. The Certifying Officer is therefore responsible for all the requirements of those sections and related sections in 40 CFR Part 1500–1508. The Certifying Officer must also:

(a) Represent the recipient and be subject to the jurisdiction of the Federal courts pursuant to section 104(f) of Title I. The Certifying Officer will not be represented by the Department of Justice in court. Reasonable defense costs, including the fees of attorneys and experts incurred in litigation relative to the recipient's compliance with this Part, may be eligible administrative costs under Title I.

(b) The Certifying Officer must make sure that the recipient review and comment on all EIS's prepared for Federal projects which may have an impact on the recipient's community development program.

(c) Perform all the coordination functions required under this Part and generally prescribed in 40 CFR Parts 1500–1508 and the other provisions of law and authorities cited in § 58.5.

§ 58.14 Interaction with States and non-Federal entities.

A grant recipient must involve environmental agencies, State and local government entities and the public in the preparation of environmental reviews (see 40 CFR 1501.4(b)). The recipient must also cooperate with State agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The recipient must prepare its EIS's for Title I projects so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint environmental reviews (see 40 CFR 1501.5(b) and 1501.6).

§ 58.15 Responsibilities for environmental review for activities related to urban renewal closeouts

Activities financially associated with or physically part of an urban renewal project may require a recipient to prepare an EA. This requirement applies only to activities which would be subject to EA under this Part and does not apply to activities which are exempt or categorically excluded under §§ 58.34 and 58.35. The grant recipient must prepare an EA or an EIS when:

(a) Activities within an active urban renewal project are to be funded by Title I.

(b) Activities financed with capital grant funds are reprogrammed from financially settled urban renewal projects into CDBG activities.

(c) Activities previously included in the urban renewal plan are being cancelled and are the types of activities subject to EAs under this Part.

The grant recipient should treat the use of a surplus resulting from a financial settlement as an activity for ROF as specified in Subpart J.

§ 58.16—58.17 [Reserved]

Subpart C—General Policy: Responsibilities of States Administering the Small Cities CDBG Program

§ 58.18 Responsibilities.

States which elect to administer the Small Cities program under section 106(d) of Title I shall make sure the nonentitlement grant recipient complies

with the provisions of NEPA and related Federal laws. The State must:

(a) Designate the State agency or agencies which will be responsible for carrying out the requirements and administrative responsibilities set forth in Subpart J and which will:

(1) Develop a monitoring and enforcement program for post-review actions on environmental reviews prepared by grant recipients and monitor compliance with any environmental conditions included in the grant award agreement under section 104(d)(2) of Title I.

(2) Receive public notices, RROFs and certifications from grant recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform the related actions for the release of environmental grant conditions.

(b) Fulfill the State role in Subpart J relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

§ 58.19 [Reserved]

Subpart D—General Policy: Environmental Review Procedures

§ 58.20 Incorporation of NEPA regulations by reference.

The principles, procedures, terminology and requirements contained in 40 CFR Parts 1500–1508 are hereby made a part of the implementing regulations under this Part.

§ 58.21 Time periods.

All time periods in this Part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication date of the notice which initiates the time period.

§ 58.22 Limitations on activities pending clearance.

A grant recipient may not spend any Title I funds on an activity until HUD or, if appropriate, the State has approved the recipient's RROF and related certification. Nor may a recipient, except for activities reimbursible under 24 CFR 570.301(e), incur costs prior to the approval of the RROF. If an activity is exempt under § 58.34, no RROF is required and therefore the above two statements would not apply and a recipient may undertake the activity immediately; for projects undertaken pursuant to Section 119 of the Act, however, release of grant funds is conditioned upon the recipient meeting each condition set forth in the grant agreement, including submission of evidentiary materials acceptable to HUD. Relocation costs under 24 CFR 570.602 may be incurred prior to the approval of the RROF and related certification for the project provided that:

(a) The payment of relocation costs is required by 24 CFR Part 42.

(b) The costs were incurred after a recipient submitted its final SOA and certifications but before it submitted the certifications for the specific project. The SOA must have included the relocation activities in the recipient's projected range of activities and in the projected use of funds.

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the authorities mentioned at § 58.5, are eligible costs in accordance with 24 CFR Parts 570 and 571.

§ 58.25—58.29 [Reserved]

Subpart E—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§ 58.30 Environmental review record.

A recipient must maintain a written record of the environmental review undertaken pursuant to this Part for each project. This document shall be designated the "Environmental Review Record" (ERR), and shall be available for public review. A recipient may use the formats contained in HUD–399–CPD, *Environmental Reviews at the Community Level*, or develop equivalent formats. The ERR shall provide a description of the project and of the activities from the recipient's Final SOA that the recipient has determined to be part of that project (see §§ 58.31 and 58.32). The ERR shall contain all the relevant documents, public notices, and written determinations required by this Part and any other information or evidence of action pertaining to the environmental review of the recipient's project.

§ 58.31 Environmental review actions for annual range of activities.

The environmental review process should begin as soon as a recipient determines the projected use of the Title I funds, the range of activities that will be included in the recipient's annual program and how the activities will be combined into projects for environmental review purposes.

§ 58.32 Project aggregation.

(a) A recipient must group together and evaluate as a single project all individual activities which are related either geographically or functionally, or are logical parts of a composite of contemplated actions. The environmental review of a multi-year project shall encompass the entire multi-year scope of activities. This applies even if some of the activities are to be funded by other than Title I funds or carried out by someone else.

(b) The environmental review of a multi-year project should take into account the relationship among component activities and the cumulative environmental impacts of the entire multi-year scope of activities. The ROF pursuant to a recipient's certification and completion of the environmental clearance procedure under Subpart J of these regulations will be for the funding of all the annual increments of the entire multi-year project.

§ 58.33 Emergencies.

In cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

§ 58.34 Exempt activities.

(a) A recipient does not have to comply with the environmental requirements of this Part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in § 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

(1) Environmental studies excepted by section 104(f)(2) of Title I and eligible under 24 CFR 570.206(h) and 571.206(h).

(2) Activities authorized by section 105(a)(12) of Title I and listed in 24 CFR 570.205 and 571.205.

(3) Administrative costs as provided by 24 CFR 570.206 and 571.206.

(4) The payment of principal and interest on outstanding urban renewal project loans under Subpart N of 24 CFR Part 570 as long as the payment is not covered by § 58.15 of this Part and the payment is not associated with a change in the related urban renewal project.

(5) The payment pursuant to section 108(c) of Title I and 24 CFR 570.701(c) and 570.703(c) of principal and interest due on notes or other obligations guaranteed under section 108 of Title I; and the application of grants pledged by the recipient pursuant to section 108(d)(2) to any repayments due the Federal government under section 108(e) of Title I as a result of such guarantees.

(6) The payment or reimbursement authorized under 24 CFR Part 570 of reasonable project engineering and

design costs incurred for a proposed activity eligible under 24 CFR 570.201 through 570.204.

(7) Activities pursuant to technical assistance awards authorized by section 107(b)(4) of Title I to prospective grant recipients under 24 CFR 570.402.

(8) Interim assistance activities eligible under 24 CFR 570.201(f)(1), and activities eligible under 24 CFR 570.201(f)(2), 570.432, and 571.308 for imminent threats to health and safety, if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration.

(9) Public service grants authorized under section 105(a)(8) of Title I and eligible under 24 CFR 570.201(e) but only under the following circumstances:

(i) The grant is for the continuation of previous Title I assistance to supplement eligible public services being maintained by the recipient with only minimal change by the recipient as to the level and type of services provided.

(ii) The services affect only the social or economic environment.

(iii) The services would not result in development of service facilities or physical improvements regardless of source of funds.

(10) Any of the categorical exclusions listed in § 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in § 58.5.

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient, for the drawdown of Title I funds to carry out the exempt activities and projects proposed in the recipient's final SOA. However, the recipient must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

§ 58.35 Categorically excluded activities

(a) *Categorical exclusions from NEPA requirements.* Activities and projects which consist solely of the following kinds of activities are categorically excluded from the NEPA requirements of this Part (see definition in 40 CFR 1508.4):

(1) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements eligible under 24 CFR 570.201(c) and 571.201(c) including these activities carried out as part of an economic development project in conjunction with the special economic development activities eligible under 24 CFR 570.203. Such activities are categorically excluded from the NEPA requirements only in the following circumstances:

(i) The facilities and improvements, acquired for continued use, are in place and will be retained in the same use that existed at the time of acquisition, without change in size, capacity or character.

(ii) The facilities or improvements replace or upgrade existing facilities or improvements with only a minimal change in use, size, capacity, or location (e.g., replacement of railroad spurs, water or sewer lines, reconstruction of curbs and sidewalks, repaving streets).

(iii) The facilities and improvements are consistent with the use of that site and the action will not change the use, size, capacity, or character of the site (e.g., landscaping, street furniture, play equipment for established parks and playgrounds).

(iv) The facilities and improvements are not activities eligible under 24 CFR 570.201 (c)(1) and (c)(2). However, activities involving fire protection equipment are categorically excluded under this section.

(2) Special projects directed to the removal of material and architectural barriers as authorized by section 105(a)(5) of Title I and 24 CFR 570.201(k).

(3) Public service grants which:

(i) Are for eligible public services not exempt under § 58.34(a)(9); are provided for a new or increased level of service not previously supported by Title I provided by the recipient in accordance with Section 105(a) of Title I and 24 CFR 570.201(e)(1).

(ii) Affect only the social or economic environment and will not result in the development of service facilities or physical improvements regardless of source of funds.

(iii) Are part of community development and housing projects funded in part or in whole under Title I and consisting solely of activities categorically excluded under this Section or exempt under § 58.34.

(4) Rehabilitation of buildings and improvements as set forth in 24 CFR 570.202 and 571.202, except paragraph (e); but only when all of the following conditions are met:

(i) Unit density is not increased more than 20 percent.

(ii) The project does not involve changes in land use from residential to nonresidential or from nonresidential to residential, or from one class of residential to another (for example, from single family attached dwellings to high-rise multiple dwelling units).

(iii) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(5) Combinations of the above activities.

(b) *Environmental requirements other than NEPA.* Even though a project is categorically excluded from NEPA requirements, a recipient must still comply with the environmental requirements of the other related laws and authorities cited at § 58.56. The recipient must document its compliance with these other requirements in the ERR. The recipient must still submit for HUD (or State) approval, the certification and the RROF. The recipient must also publish the NOI/RROF required in § 58.70.

(c) *Circumstances requiring NEPA review.* If a recipient determines that an activity or project identified in paragraph (a) of this section, because of specific circumstances and conditions which exist at the location of the activity or project, may have a significant environmental effect, it shall comply with the NEPA requirements of this part.

§ 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, the recipient must prepare an EA in accordance with Subpart F. If it is evident without preparing an EA that an EIS is required pursuant to the requirements of § 58.37, the recipient should proceed directly to an EIS.

§ 58.37 Cases when environmental impact statements are required.

(a) An EIS is required under any of the following circumstances:

(1) The project is determined to have a potentially significant impact on the human environment under NEPA.

(2) The project may result in a recipient's violation of the authorities cited in § 58.5. The effect of violations should be used to determine whether an EIS is warranted in accordance with 40 CFR 1508.27.

(3) The project will affect the environmental concerns of the Federal laws and authorities cited in § 58.5 and no alternate means of procedural resolution is feasible.

(4) The project would provide a site or sites for hospitals and nursing homes containing a total of 2,500 or more beds.

(5) The project would remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under § 58.35), or would result

in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

(6) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is intended to serve nonresidential uses, either instead of or in addition to residential uses, the recipient must determine how many residential units could be served if all the capacity were to be used for housing. If the number is 2,500 or more, the threshold has been exceeded. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(b) Projects exceeding the thresholds specified in paragraphs (a)(4), (5) and (6) of this section will normally require the preparation of an EIS. If, on the basis of an EA, a recipient determines that these thresholds are the sole reason for the EIS, the recipient may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the recipient makes the final determination whether to prepare an EIS (see § 58.46).

§§ 58.38–58.39 [Reserved]

Subpart F—Environmental Review Process: Environmental Assessments (EA's)

§ 58.40 Preparing the environmental assessments.

It is up to the recipient to decide how to prepare the EA. However, the recipient must describe the process it followed, using either Format I in HUD–399–CPD, *Environmental Reviews at the Community Level*, or the equivalent.

§ 58.41 Environmental assessment finding.

When the EA is completed, the recipient must make either:

(a) A finding of no significant impact (FONSI) in which the recipient determines that the request for release of funds for the project is not an action which may or will significantly affect the quality of human environment; or

(b) A finding of significant impact in which the request for release of funds for the project is deemed to be an action which may significantly affect the quality of the human environment. The recipient must then proceed with its environmental review under Subparts H or I.

§ 58.42 Notice requirements for a finding of no significant impact (FONSI).

If the recipient makes a finding of no significant impact it must prepare a FONSI notice, using format VI of HUD–399–CPD, *Environmental Reviews at the Community Level*, as revised, or the equivalent.

§ 58.43 Publication and dissemination of the finding of no significant impact.

As a minimum the recipient must send the FONSI to the local news media, to individuals and groups known to be interested in its activities; to appropriate local, State, and Federal agencies; to the Headquarters and appropriate Regional Office of the Environmental Protection Agency, and to the HUD Area Office (or the State, where applicable). The FONSI notice shall be published at least once in a newspaper of general circulation in the affected community. In cases where a recipient's jurisdiction is not served by regularly published local or areawide newspapers, it must arrange to have the notice prominently displayed at the local post office and its substations. The notice should also be prominently displayed in other public buildings.

§ 58.44 Simultaneous publication of the finding of no significant impact notice and the notice of intent to request release of funds.

The recipient may wish to publish the NOI/RROF at the same time it publishes the FONSI notice. It may publish the two notices as:

(a) Concurrent but separate notices, published and disseminated at the same time and in the manner prescribed in § 58.43; or

(b) A combined Notice consisting of a single document containing the FONSI and the NOI/RROF. This combined notice shall:

(1) Clearly indicate that the combined notice is intended to meet two separate procedural requirements; and

(2) Advise the public to specify in their comments which "notice" their comments address.

The recipient must take into account the comments received in response to the above notices before proceeding with a RROF and certification.

§ 58.45 Public comment periods.

Prior to taking further action pursuant to the following notices, the public must be given the following minimum time periods for comments on such notices:

(a) *Notice of finding of no significant impact:* 15 days;

(b) *Notice of intent to request release of funds:* 7 days; and

(c) *Concurrent or combined notices:* 15 days.

§ 58.46 Time delays for exceptional circumstances.

Under the circumstances described below, the recipient must make the FONSI available for public comments for 30 days before it files the RROF. These circumstances are:

(a) When there is considerable interest or controversy concerning the project;

(b) When the proposed project is similar to other Title I projects which normally require the preparation of an EIS; or

(c) When the project is unique and without precedent.

§ 58.47 Re-evaluation of assessment findings.

A recipient must re-evaluate the EA findings when:

(a) It makes substantial changes in the nature, magnitude or extent of the project including adding new activities not anticipated in the original scope of the project and its cost estimate;

(b) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(c) The recipient selects an alternative not considered in the original EA.

The purpose of a recipient's re-evaluation of the EA is to determine if the FONSI is still valid. If the FONSI is still valid but the data or conditions upon which it was based have changed, it must amend the original assessment and update its ERR by including this re-evaluation and its determination based on its findings. If the recipient determines that the FONSI is no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.

§ 58.48–58.49 [Reserved]

Subpart G—Environmental Assessments: Coordination Under Federal Laws and Authorities

§ 58.50 EA requirements other than NEPA.

Early in the environmental assessment of a project, a recipient must initiate coordination and consultation with the concerned Federal agency or agencies, or with the designated State agencies responsible for administering State programs. It must complete all procedures and take other actions required under the provisions of law

specified in § 58.5 that are applicable to its project. Any such actions which have been taken shall be integrated into the EA and documented in the recipient's project ERR.

§ 58.51 [Reserved]

Subpart H—Environmental Review Process: Environmental Impact Statement Determinations

§ 58.52 Adoption of other agencies' EIS's.

A recipient may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR Parts 1500–1508. If it adopts an EIS prepared by another Title I recipient or a Federal agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the Title I project if these are different from the project reviewed in the EIS. In such cases a recipient must prepare, circulate and file a supplemental draft EIS in the manner prescribed in § 58.64 and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency which prepared the original EIS should be informed that it intends to amend and adopt the EIS. A recipient may adopt an EIS when it acts as a cooperating agency in its preparation pursuant to 40 CFR 1506.3. The recipient is not required to re-circulate or file the EIS but must complete the clearance process for the RROF. The decision to adopt a prior EIS shall be made a part of the project ERR.

§ 58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the Federal Register for a project pursuant to this Part or under preceding categorical programs of HUD, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the conditions set forth below are met:

(a) The ERR contains a decision based on a finding pursuant to § 58.41 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:

(1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;

(2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

(3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;

(4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

(b) The prior final EIS has been filed within five (5) years, and updated as follows:

(1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;

(2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.

(c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

§ 58.54 [Reserved]

Subpart I—Environmental Review Process: Procedure for Draft, Final and Supplemental Environmental Impact Statements

§ 58.55 Notice of intent to prepare an EIS.

As soon as practicable after a recipient decides to prepare an EIS, it must publish a NOI/EIS, using HUD format V of HUD–399–CPD, *Environmental Reviews at the Community Level*, or other equivalent format. The recipient must publish and disseminate the NOI/EIS in the same manner as the FONSI under § 58.43, and it may proceed immediately with the preparation of the Draft EIS.

§ 58.56 Scoping process.

For all projects or other actions which require an EIS, a recipient must follow the scoping process described in 40 CFR Part 1501.7. The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under § 58.59. The recipient must wait at least 15 days after publishing the NOI/EIS before holding a scoping meeting.

§ 58.57 Lead agency designation.

The determination of who will act as a lead agency must be made according to the procedures and requirements in 40 CFR 1501.5. If there are several agencies ready to assume the role, the recipient must make its decision based on the criteria in 40 CFR 1501.5(c). If the recipient and a Federal agency are unable to reach agreement, then the recipient must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

§ 58.58 Cooperating agencies.

The responsibilities of lead agencies and cooperating agencies are prescribed by 40 CFR 1501.5 and 1501.6.

§ 58.59 Public hearings and meetings.

The requirements for public hearings and meetings are prescribed in 40 CFR 1506.6.

(a) *Factors to consider.* In determining whether or not to hold public hearings, the recipient must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

(2) The degree of interest in or controversy concerning the project.

(3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the recipient.

(4) The extent to which public involvement has been achieved through other means.

(b) *Procedure.* All public hearings must be preceded by a notice of public hearing, which must be published and disseminated in the same manner as the FONSI Notice. The public hearing notice must be published at least 15 days before the hearing date. The Notice must:

(1) State the date, time, place, and purpose of the hearing or meeting.

(2) Describe the project, its estimated costs, and the project area.

(3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.

(4) State the recipient's name and address and the name and address of its Certifying Officer.

(5) State what documents are available, where they can be obtained, and any charges that may apply.

§ 58.60 Draft environmental impact statements (DEIS).

The uniform procedures on the preparation, format and content of EIS's under 40 CFR Part 1502 are incorporated by reference and made a part of the provisions of this Subpart. A recipient

must prepare the DEIS using the formats in HUD–399–CPD, *Environmental Reviews at the Community Level,* or their equivalent.

§ 58.61 Filing of draft environmental impact statement.

A recipient must comply with the preparation, timing, filing, circulation and review requirements of 40 CFR 1502.5 and 1502.19. In addition to filing five copies with EPA Headquarters pursuant to 40 CFR 1506.9, the recipient must send five copies to the applicable Regional Office of the U.S. Environmental Protection Agency. Copies shall also be made available to the public at the recipient's offices and at public libraries. Copies or summaries of the draft EIS must be made available to persons who request them.

§ 58.62 Final environmental impact statements (FEIS).

A recipient must prepare the final EIS in accordance with 40 CFR Part 1502 and the format provided in HUD–399–CPD, *Environmental Reviews at the Community Level,* or their equivalent. The recipient must file and distribute the final EIS in the same manner as prescribed in § 58.61. In addition the recipient must send one copy of the final EIS to the State (if applicable), one copy each to the appropriate HUD Area Office and Regional Office and one copy to HUD's Headquarters Library, Eighth Floor, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410. Copies or summaries of the final EIS must be made available to persons who request them.

§ 58.63 Waivers from time requirements.

A recipient may extend prescribed periods where unusual circumstances warrant. The recipient may request waivers from the time requirements specified for the draft and final EIS from the Environmental Protection Agency as prescribed in 40 CFR 1506.10.

§ 58.64 Supplemental environmental impact statements.

A supplement to the DEIS or FEIS must be prepared when a recipient makes substantial changes in the proposed project or when significant new circumstances or information become available during the environmental review process. Supplements may be used to modify or update EIS's which the recipient has determined to be valid and are being adopted for use. Supplemental EIS's are subject to the requirements set forth in 40 CFR 1502.9.

§ 58.65 Record of decision (ROD).

The recipient must prepare a "Record of Decision" which shall contain the information prescribed in 40 CFR 1505.2 and must summarize the monitoring and enforcement program for the mitigation measures called for in the EIS. The ROD must be signed and dated by the recipient's Certifying Officer and shall be made a part of the project's ERR.

§ 58.66 Coordination under Federal laws and authority.

The recipient must coordinate and integrate its EIS with other environmental review, analyses, surveys and related actions undertaken pursuant to the related laws and authorities cited in § 58.5. Pursuant to 40 CFR 1502.25, the environmental review documents of a Title I project will be used to document the recipient's compliance with the requirements of the related laws and authorities that are applicable to the project. The recipient should use whatever formats are required or recommended by the agencies which have a formal review procedure. The actions taken and the documents prepared under these related laws and authorities can also be incorporated by reference into the recipient's EIS (see 40 CFR 1502.21).

§ 58.67—§ 58.69 [Reserved]

Subpart J—Release of Funds for Particular Projects

§ 58.70 Notice of intent to request release of funds.

At least seven calendar days before submitting its RROF and certification, the recipient must publish and disseminate a NOI/RROF the same way as a FONSI, using Format VII of HUD–399–CPD, *Environmental Reviews at the Community Level,* or an equivalent format. The recipient may publish this notice at the same time as, or combined with, that required by § 58.42.

§ 58.71 Request for release of funds and certification.

The RROF and certification shall be sent to the appropriate HUD Area Office (or the State if applicable). This request shall be executed by the recipient's Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required by section 104(f)(2) of Title I. The RROF and certification must be as specified in the most current edition of Form HUD–7015.15.

§ 58.72 [Reserved]

§ 58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to § 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in this Subpart. HUD (or the State) can refuse the RROF and certification on any grounds set forth in § 58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

§ 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives a recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

§ 58.75 Permissible bases for objections.

HUD, (or the State), will consider objections claiming a recipient's non-compliance with this Part based on any of the grounds listed below:

(a) The certification was not in fact executed by the recipient's Certifying Officer.

(b) The recipient has failed to make one of the two findings pursuant to § 58.41 or to make the written determination decision required by §§ 58.47, 58.53 or 58.64 for the project, as applicable.

(c) The recipient has omitted one or more of the steps set forth at Subparts F and G for the preparation and completion of an EA.

(d) The recipient has omitted one or more of the steps set forth at Subparts H and I for the conduct, preparation and completion of an EIS.

(e) No opportunity was given to the Advisory Council on Historic Preservation or its Executive Director to review the effect of the project on a property listed on the *National Register of Historic Places,* or found to be eligible for such listing by the Secretary of the Interior, in accordance with 36 CFR Part 800 (and 36 CFR Part 801 for UDAG projects).

(f) With respect to a UDAG project, the recipient has not performed environmental review actions in compliance with the historic preservation procedures and

requirements prescribed in sections 119(c)(4) and 121 of Title I.

(g) With respect to a project for which a recipient has decided that §§ 58.47, 58.53 or 58.64 apply, the recipient has failed to include in the ERR the written decision required, or its decision is not supported by facts specified by the objecting party.

(h) Another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

The only bases upon which HUD or the State will disapprove the RROF and certification are set forth above.

§ 58.76 Procedure for objections.

A person or agency objecting to a recipient's request for the release of funds and the related certification shall:

(a) Submit objections in writing to HUD (or the State).

(b) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.

(c) Be dated when signed.

(d) Describe the basis for objection and the facts or legal authority supporting the objection.

(e) State when a copy of the objections was mailed or delivered to the recipient's Certifying Officer.

§ 58.77 Effect of approval of certification.

(a) *Responsibilities of HUD and States.* HUD's (or, where applicable, the State's), approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at § 58.5 insofar as those responsibilities relate to the release of funds under Title I.

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the recipient and not with HUD. It shall be HUD's policy to refer all inquiries and complaints to the recipient and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the recipient, and not the State, and may refer inquiries and complaints to the recipients and its Certifying Officer. Remedies for non-compliance are set forth at §§ 570.910 to 570.913, 571.706 and 571.707 of this title.

(c) *Implementation of environmental review decisions.* Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using such of the procedures provided for in Subparts J and O, Part 570 and Subparts F and H of Part 571 of this title) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

§ 58.78–58.79 [Reserved]

Dated: March 18, 1982.

Stephen Bollinger,

Assistant Secretary for Community Planning and Development.

[FR Doc. 82-9820 Filed 4-9-82; 8:45 am]

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EXECUTIVE ORDER 11288

July 7, 1966, 31 F.R. 9261

PREVENTION, CONTROL, AND ABATEMENT OF WATER POLLUTION BY FEDERAL ACTIVITIES

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466),[2] and Reorganization Plan No. 2 of 1966 (31 F.R. 6857),[3] it is ordered as follows:

Section 1. Policy. The heads of the departments, agencies, and establishments of the Executive Branch of the Government shall provide leadership in the nationwide effort to improve water quality through prevention, control, and abatement of water pollution from Federal Government activities in the United States. In order to achieve these objectives—

(1) Pollution from all existing Federal facilities and buildings shall be controlled in accordance with plans to be submitted to the Director of the Bureau of the Budget pursuant to Section 3 of this order;

(2) New Federal facilities and buildings shall be constructed so as to meet the pollution control standards prescribed by Section 4 of this order;

(3) Pollution caused by all other operations of the Federal Government, such as water resources projects and operations under Federal loans, grants, or contracts, shall be reduced to the lowest level practicable;

(4) Review and surveillance of all such activities shall be maintained to assure that pollution control standards are met on a continuing basis;

(5) The Secretary of the Interior shall, in administering the Federal Water Pollution Control Act, as amended, provide technical advice and assistance to the heads of other departments, agencies, and establishments in connection with their duties and responsibilities under this order;

(6) The head of each department, agency, and establishment shall ensure compliance with Section 11 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466h), which, as modified by Reorganization Plan No. 2 of 1966 (31 F.R. 6857), declares it to be the intent of Congress that Federal departments and agencies shall, insofar as practicable and consistent with the interests of the United States and within available appropriations, cooperate with the Secretary of the Interior and with State and interstate agencies and municipalities, in preventing or controlling water pollution; and

(7) Water pollution control needs shall be considered in the initial stages of planning for each new installation or project, and the head of each department, agency, and establishment shall establish appropriate procedures for securing advice and for consulting with the Secretary of the Interior at the earliest feasible stage.

Sec. 2. Procedures for new Federal facilities and buildings. (a) A request for funds to defray the cost of designing and constructing new facilities and buildings in the United States shall be included in the annual budget estimates of a department, agency, or establishment only if such request includes funds to defray the costs of such measures as may be necessary to assure that the new facility or building will meet the general standards prescribed by Section 4 of this order.

(b) Prior to any solicitation of bids for construction of any such new facility or building a description of the essential features of the water pollution control and treatment measures proposed for the project shall be submitted to the Secretary of the Interior for prompt review and advice as to the adequacy and effectiveness of the measures proposed

and for advice as to any related operating procedures and continuing laboratory examinations deemed necessary to ensure effective plant operation.

Sec. 3. Procedures for existing Federal facilities and buildings. (a) In order to facilitate budgeting for corrective and preventive measures, the head of each department, agency, and establishment shall provide for an examination of all existing facilities and buildings under his jurisdiction in the United States and shall develop and present to the Director of the Bureau of the Budget, by July 1, 1966, a phased and orderly plan for installing such improvements as may be needed to prevent water pollution, or abate such water pollution as may exist, with respect to such buildings and facilities. Subsequent revisions needed to keep any such plan up-to-date shall be promptly submitted to the Director of the Bureau of the Budget. Future construction work at each such facility and the expected future use of the facility shall be considered in developing such a plan. Each such plan, and any revisions therein, shall be developed in consultation with the Secretary of the Interior in order to ensure that adoption of the measures proposed thereby will result in the prevention or abatement of water pollution in conformity with the general standards prescribed by Section 4 of this order.

(b) The head of each department, agency, and establishment shall present to the Director of the Bureau of the Budget, by July 1, 1967, and by the first of each fiscal year thereafter, an annual report describing the progress of his department, agency, or establishment in accomplishing the objectives of its pollution abatement plan.

Sec. 4. General standards. (a) Federal installations shall provide secondary treatment, or its equivalent, for all wastes except cooling water and fish hatchery effluents. Discharge of wastes into municipal sewerage systems maintaining adequate treatment is hereby declared to be the preferred method of disposal. However, whenever connection to such a system is not feasible, the department, agency, or establishment concerned shall be responsible for installing its own waste treatment system. Upon an application of the head of a department, agency, or establishment, a degree of treatment less than secondary may be approved with respect to an agency-installed system in an exceptional case if the Secretary of the Interior finds that a lesser degree of treatment is adequate to protect the quality of the receiving waters.

(b) If discharge of cooling water is expected to create problems by significantly increasing the temperature of the receiving waters, facilities shall be installed, or operating procedures shall be established, to maintain water temperatures within acceptable limits.

(c) Storage facilities for materials which are hazardous to health and welfare, and for oils, gases, fuels or other materials capable of causing water pollution, if accidentally discharged, shall be located so as to minimize or prevent any spillage which might result in water pollution. Engineering measures to entrap spillage, such as catchment areas, relief vessels, or entrapment-dikes, shall be installed so as to prevent accidental pollution of water.

(d) No waste shall be discharged into waters if it contains any substances in concentrations which are hazardous to health.

(e) No waste shall be discharged into waters if it contains any substances in concentrations which will result in substantial harm to domestic animals, fish, shellfish, or wildlife, if methods of treatment or disposal are available that will remove or render harmless such pollutants. If such methods are not available, but can reasonably be developed, they will be developed and used at the earliest possible date. A determination that such methods are not available or cannot reasonably be developed will not be made without the concurrence of the Secretary of the Interior.

(f) The head of each department, agency, and establishment shall, with respect to each installation in the United States under his jurisdiction, make, or cause to be made, such surveys as may be necessary to

ensure that discharges of waste effluents from activities concerned with radioactivity are in accord with the applicable rules, regulations, or requirements of the Atomic Energy Commission (10 CFR, Part 20) and the policies and guidance of the Federal Radiation Council as published in the FEDERAL REGISTER.

(g) Construction and operating plans for waste treatment facilities shall include space for the conduct of necessary laboratory analyses and for the maintenance of records of results thereof whenever the size and complexity of the system makes this necessary.

(h) Construction and operating plans for waste treatment facilities shall take into account water quality standards promulgated pursuant to the provisions of the Water Quality Act of 1965 (79 Stat. 903).

(i) Any waste treatment facilities installed by any department, agency, or establishment shall as far as practicable be constructed so as to conform with any areawide program, meeting criteria established by the Secretary of Housing and Urban Development for a unified or officially coordinated areawide sewer facilities system as part of the comprehensively planned development of the area pursuant to Section 702(c) of the Housing and Urban Development Act of 1965, that may have been adopted with respect to the area concerned.

Sec. 5. Modification of standards. The standards prescribed by paragraphs (a) through (e) and (g) through (i) of Section 4 of this order may be supplemented or modified by the Secretary of the Interior, after consultation with the Director of the Bureau of the Budget. All such changes shall be published in the FEDERAL REGISTER.

Sec. 6. Procedures for Federal water resources projects. (a) The Secretaries of Agriculture and the Army, the Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission shall present for the consideration of the Secretary of the Interior any plans that they propose to recommend with respect to the authorization or construction of any Federal water resource development project in the United States. Such plans must be consistent with the general standards prescribed by Section 4 of this order to the fullest extent practicable. The Secretary of the Interior shall review such plans and supporting data relating to water quality, and shall prepare a report to the head of the responsible department, agency, or establishment describing the potential impact of the project on water quality, including recommendations concerning any changes or other measures with respect thereto which he considers to be necessary with respect to the design, construction, and operation of the project.

(b) The report of the Secretary of the Interior shall accompany any report proposing authorization or construction of such a water resource development project. In any case in which the Secretary of the Interior fails to submit a report within 90 days after receipt of project plans, the head of the department, agency, or establishment concerned may propose authorization or construction of the project without such an accompanying report. In any such case, the head of the department, agency, or establishment concerned shall explicitly state in his report concerning the project that the Secretary of the Interior has not reported on the potential impact of the project on water quality.

Sec. 7. Review of facilities or operations supported by Federal loans, grants, or contracts. (a) The head of each department, agency, and establishment shall conduct a review of the loan, grant, and contract practices of his organization to determine the extent to which water pollution control standards similar to those set forth in this order for direct Federal operations should be adhered to by borrowers, grantees, or contractors with respect to their operations in the United States. The head of each department, agency, and establishment shall review all such activities for which there is a significant potential for reduction of water pollution and develop appropriate recommendations for accomplishing such reduction. In conducting this review, necessary technical assistance should be sought from the Secretary of the Interior and the heads

of other appropriate Federal agencies. A report on the results of this review shall be submitted to the Director of the Bureau of the Budget by July 1, 1966.

(b) The heads of departments, agencies, and establishments are encouraged to prescribe regulations covering loan, grant, or contract practices designed to reduce water pollution.

Sec. 8. Study of water pollution from vessel operations. The Secretary of the Interior shall make a comprehensive study of the problem of water pollution within the United States caused by the operation of vessels, and shall develop such recommendations for corrective or preventive action as may be appropriate, including recommendations with respect to vessels operated by any department, agency, or establishment of the Federal Government. The results of the study and recommendations shall be transmitted to the President by January 1, 1967. The study and report thereon shall be prepared in consultation with, and with the advice and assistance of, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare.

Sec. 9. Prior Executive order superseded. Executive Order No. 11258 of November 17, 1965,[1] is hereby superseded.

LYNDON B. JOHNSON

THE WHITE HOUSE,
July 2, 1966.

EXECUTIVE ORDER 11296

August 11, 1966, 31 F.R. 10663

EVALUATION OF FLOOD HAZARD IN LOCATING FEDERALLY OWNED OR FINANCED BUILDINGS, ROADS, AND OTHER FACILITIES, AND IN DISPOSING OF FEDERAL LANDS AND PROPERTIES

WHEREAS uneconomic uses of the Nation's flood plains are occurring and potential flood losses are increasing despite substantial efforts to control floods; and

WHEREAS national and regional studies of areas and property subject to flooding indicate a further increase in flood damage potential and flood losses, even with continuing investment in flood protection structures; and

WHEREAS the Federal Government has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually disposes of thousands of acres of Federal lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

WHEREAS the availability of Federal loans and mortgage insurance and land use planning programs are determining factors in the utilization of lands:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

Section 1. The heads of the executive agencies shall provide leadership in encouraging a broad and unified effort to prevent uneconomic uses and development of the Nation's flood plains and, in particular, to lessen the risk of flood losses in connection with Federal lands and installations and federally financed or supported improvements. Specifically:

(1) All executive agencies directly responsible for the construction of Federal buildings, structures, roads, or other facilities shall evaluate flood hazards when planning the location of new facilities and, as far as practicable, shall preclude the uneconomic, hazardous, or unnecessary use of flood plains in connection with such facilities. With respect to existing Federally owned properties which have suffered flood damage or which may be subject thereto, the responsible agency head shall require conspicuous delineation of past and probable flood heights so as to assist in creating public awareness of and knowledge about flood hazards. Whenever practical and economically feasible, flood proofing measures shall be applied to existing facilities in order to reduce flood damage potential.

(2) All executive agencies responsible for the administration of Federal grant, loan, or mortgage insurance programs involving the construction of buildings, structures, roads, or other facilities shall evaluate flood hazards in connection with such facilities and, in order to minimize the exposure of facilities to potential flood damage and the need for future Federal expenditures for flood protection and flood disaster relief, shall, as far as practicable, preclude the uneconomic, hazardous, or unnecessary use of flood plains in such connection

(3) All executive agencies responsible for the disposal of Federal lands or properties shall evaluate flood hazards in connection with lands or properties proposed for disposal to non-Federal public instrumentalities or private interests and, as may be desirable in order to minimize future Federal expenditures for flood protection and flood disaster relief and as far as practicable, shall attach appropriate restrictions with respect to uses of the lands or properties by the purchaser and his successors and may withhold such lands or properties from disposal. In carrying out this paragraph, each executive agency may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the disposal documents.

(4) All executive agencies responsible for programs which entail land use planning shall take flood hazards into account when evaluating plans and shall encourage land use appropriate to the degree of hazard involved.

Sec. 2. As may be permitted by law, the head of each executive agency shall issue appropriate rules and regulations to govern the carrying out of the provisions of Section 1 of this order by his agency.

Sec. 3. Requests for flood hazard information may be addressed to the Secretary of the Army or, in the case of lands lying in the basin of the Tennessee River, to the Tennessee Valley Authority. The Secretary or the Tennessee Valley Authority shall provide such information as may be available, including requested guidance on flood proofing. The Department of Agriculture, Department of the Interior, Department of Commerce, Department of Housing and Urban Development, and Office of Emergency Planning, and any other executive agency which may have information and data relating to floods shall cooperate with the Secretary of the Army in providing such information and in developing procedures to process information requests.

Sec. 4. Any requests for appropriations for Federal construction of new buildings, structures, roads, or other facilities transmitted to the Bureau of the Budget by an executive agency shall be accompanied by a statement by the head of the agency on the findings of his agency's evaluation and consideration of flood hazards in the development of such requests.

Sec. 5. As used in this order, the term "executive agency" includes any department, establishment, corporation, or other organizational entity of the executive branch of the Government.

Sec. 6. The executive agencies shall proceed immediately to develop such procedures, regulations, and information as are provided for in, or may be necessary to carry out, the provisions of Sections 1, 2, and 3 of this order. In other respects this order shall take effect on January 1, 1967.

LYNDON B. JOHNSON

THE WHITE HOUSE,
August 10, 1966.

EXECUTIVE ORDER 11514—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

SECTION 1. Policy. The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

SEC. 2. Responsibilities of Federal agencies. Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by Section 102 of the Act.

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

SEC. 3. Responsibilities of Council on Environmental Quality. The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in Section 201 of the Act.

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

March 7, 1970
Amended by E.O. 11991
May 24, 1977

EXECUTIVE ORDER 11593

Protection and Enhancement of the Cultural Environment

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.), the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.), the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.), and the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 et seq.), it is ordered as follows:

Section 1. *Policy.* The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch of the Government (hereinafter referred to as "Federal agencies") shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3), in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

Sec. 2. *Responsibilities of Federal agencies.* Consonant with the provisions of the acts cited in the first paragraph of this order, the heads of Federal agencies shall:

(a) no later than July 1, 1973, with the advice of the Secretary of the Interior, and in cooperation with the liaison officer for historic preservation for the State or territory involved, locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.

(b) exercise caution during the interim period until inventories and evaluations required by subsection (a) are completed to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished or substantially altered. The agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion on the National Register of Historic Places. The Secretary shall consult with the liaison officer for historic preservation for the State or territory involved in arriving at his opinion. Where, after a reasonable period in which to review and evaluate the property, the Secretary determines that the property is likely to meet the criteria prescribed for listing on the National Register of Historic Places, the Federal agency head shall reconsider the proposal in light of national environmental and preservation policy. Where, after such reconsideration, the Federal agency head proposes to transfer, sell, demolish or substantially alter the property he shall not act with respect to the property until the Advisory Council on Historic Preservation shall have been provided an opportunity to comment on the proposal.

(c) initiate measures to assure that where as a result of Federal action or assistance a property listed on the National Register of Historic Places is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured drawings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress as part of the Historic American Buildings Survey or Historic American Engineering Record for future use and reference. Agencies may call on the Department of the Interior for advice and technical assistance in the completion of the above records.

(d) initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration, of federally owned and registered sites at professional standards prescribed by the Secretary of the Interior.

(e) submit procedures required pursuant to subsection (d) to the Secretary of the Interior and to the Advisory Council on Historic Preservation no later than January 1, 1972, and annually thereafter, for review and comment.

(f) cooperate with purchasers and transferees of a property listed on the National Register of Historic Places in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests.

Sec. 3. *Responsibilities of the Secretary of the Interior.* The Secretary of the Interior shall:

(a) encourage State and local historic preservation officials to evaluate and survey federally owned historic properties and, where appropriate, to nominate such properties for listing on the National Register of Historic Places.

(b) develop criteria and procedures to be applied by Federal agencies in the reviews and nominations required by section 2(a). Such criteria and procedures shall be developed in consultation with the affected agencies.

(c) expedite action upon nominations to the National Register of Historic Places concerning federally owned properties proposed for sale, transfer, demolition or substantial alteration.

(d) encourage State and Territorial liaison officers for historic preservation to furnish information upon request to Federal agencies regarding their properties which have been evaluated with respect to historic, architectural or archaeological significance and which as a result of such evaluations have not been found suitable for listing on the National Register of Historic Places.

(e) develop and make available to Federal agencies and State and local governments information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties.

(f) advise Federal agencies in the evaluation, identification, preservation, improvement, restoration and maintenance of historic properties.

(g) review and evaluate the plans of transferees of surplus Federal properties transferred for historic monument purposes to assure that the historic character of such properties is preserved in rehabilitation, restoration, improvement, maintenance and repair of such properties.

(h) review and comment upon Federal agency procedures submitted pursuant to section 2(e) of this order.

Richard Nixon

APPENDIX I

EXECUTIVE ORDER 11593

Protection and Enhancement of the Cultural Environment

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.), the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.), the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.), and the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 et seq.), it is ordered as follows:

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SEC. 2. *Responsibilities of Federal agencies.* Consonant with the provisions of the acts cited in the first paragraph of this order, the heads of Federal agencies shall:

(a) no later than July 1, 1973, with the advice of the Secretary of the Interior, and in cooperation with the liaison officer for historic preservation for the State or territory involved, locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.

(b) exercise caution during the interim period until inventories and evaluations required by subsection (a) are completed to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished or substantially altered. The agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion on the National Register of Historic Places. The Secretary shall consult with the liaison officer for historic preservation for the State or territory

involved in arriving at his opinion. Where, after a reasonable period in which to review and evaluate the property, the Secretary determines that the property is likely to meet the criteria prescribed for listing on the National Register of Historic Places, the Federal agency head shall reconsider the proposal in light of national environmental and preservation policy. Where, after such reconsideration, the Federal agency head proposes to transfer, sell, demolish or substantially alter the property he shall not act with respect to the property until the Advisory Council on Historic Preservation shall have been provided an opportunity to comment on the proposal.

(c) initiate measures to assure that where as a result of Federal action or assistance a property listed on the National Register of Historic Places is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured drawings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress as part of the Historic American Buildings Survey or Historic American Engineering Record for future use and reference. Agencies may call on the Department of the Interior for advice and technical assistance in the completion of the above records.

(d) initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration, of federally owned and registered sites at professional standards prescribed by the Secretary of the Interior.

(e) submit procedures required pursuant to subsection (d) to the Secretary of the Interior and to the Advisory Council on Historic Preservation no later than January 1, 1972, and annually thereafter, for review and comment.

(f) cooperate with purchasers and transferees of a property listed on the National Register of Historic Places in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests.

SEC. 3. *Responsibilities of the Secretary of the Interior.* The Secretary of the Interior shall:

(a) encourage State and local historic preservation officials to evaluate and survey federally owned historic properties and, where appropriate, to nominate such properties for listing on the National Register of Historic Places.

(b) develop criteria and procedures to be applied by Federal agencies in the reviews and nominations required by section 2(a). Such criteria and procedures shall be developed in consultation with the affected agencies.

(c) expedite action upon nominations to the National Register of Historic Places concerning federally owned properties proposed for sale, transfer, demolition or substantial alteration.

(d) encourage State and Territorial liaison officers for historic preservation to furnish information upon request to Federal agencies regarding their properties which have been evaluated with respect to historic,

architectural or archaeological significance and which as a result of such evaluations have not been found suitable for listing on the National Register of Historic Places.

(e) develop and make available to Federal agencies and State and local governments information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties.

(f) advise Federal agencies in the evaluation, identification, preservation, improvement, restoration and maintenance of historic properties.

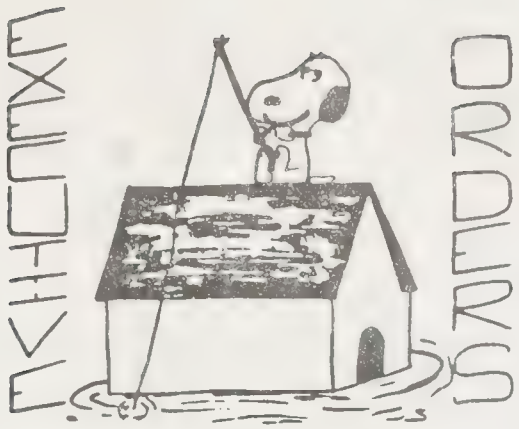
(g) review and evaluate the plans of transferees of surplus Federal properties transferred for historic monument purposes to assure that the historic character of such properties is preserved in rehabilitation, restoration, improvement, maintenance and repair of such properties.

(h) review and comment upon Federal agency procedures submitted pursuant to section 2(e) of this order.

Richard Nixon

THE WHITE HOUSE,
May 13, 1971.

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APPENDIX C—E O 11988
FLOODPLAIN MANAGEMENT

Statement by the President
Accompanying E O 11988 May 24, 1977

The floodplains which adjoin the Nation's inland and coastal waters have long been recognized as having special values to our citizens They have provided us with wildlife habitat agricultural and forest products, stable ecosystems and park and recreation areas However unwise use and development of our riverine, coastal, and other floodplains not only destroy many of the special qualities of these areas but pose a severe threat to human life, health, and property

Since the adoption of a national flood control policy in 1936, the Federal Government has invested about $10 billion in flood protection works Despite substantial efforts by the Federal Government to reduce flood hazards and protect floodplains, annual losses from floods and adverse alteration of floodplains continue to increase

The problem arises mainly from unwise land use practices The Federal Government can be responsible for or can influence these practices in the construction of projects, in the management of its own properties, in the provision of financial or technical assistance including support of financial institutions, and in the uses for which its agencies issue licenses or permits. In addition to minimizing the danger to human and nonhuman communities living in floodplains, active floodplain management represents sound business practice by reducing the risk of flood damage to properties benefiting from Federal assistance.

Because unwise floodplain development can lead to the loss of human and other natural resources, it is simply a bad Federal investment and should be avoided In order to avoid to the extent possible the long-and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of flood plain development wherever there is a practicable alternative, I have issued an Executive order on flood plain management.

E.O 11988—Floodplain Management

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S C 4321 *et seq.*), the National Flood Insurance Act of 1968, as amended (42 U.S C 4001 *et seq.*), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows

SECTION 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring managing, and disposing of Federal lands and facilities, (2) providing Federally undertaken, financed, or assisted construction and improvements, and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities

SEC 2 In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain, to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management, and to prescribe procedures to implement the policies and requirements of this Order, as follows

(a) (1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain—for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available If such maps are not available the agency shall make a determination of the location of the floodplain based on the best available information The Water Resources Council shall issue guidance on this information not later than October 1, 1977

(2) If an agency has determined to, or proposes to, conduct, support or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplain If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain

(3) For programs subject to the Office of Management and Budget Circular A-95 the agency shall send the notice, not to exceed three pages in length including a location map to the state and areawide A 95 clearinghouses for the geographic areas affected The notice shall include (i) the reasons why the action is proposed to be located in a floodplain, (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered Agencies shall endeavor to allow a brief comment period prior to taking any action

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loans or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the

activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Federal Insurance Administration, and the Council on Environmental Quality, and shall update such procedures as necessary.

Sec. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall: (1) reference in the conveyance those uses that are restricted under identified Federal, State, or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

Sec. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

Sec. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978 regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

Sec. 6. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

Sec. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

Sec. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Sec. 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

JIMMY CARTER

The White House,
May 24, 1977

Executive Order 11990—Protection of Wetlands

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows.

SECTION 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

SEC. 2. (a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

SEC. 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

SEC. 4. When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

SEC. 5. In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's

effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion,

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses

SEC. 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order

SEC 7. As used in this Order,

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands

(b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughts, potholes, wet meadows, river overflows, mud flats, and natural ponds

SEC. 8. This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977 The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

SEC. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat 148, 42 U.S.C. 5145 and 5146)

SEC. 10. To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974 as amended (88 Stat 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking and action pursuant to the National Environmental Policy Act of 1969, as amended.

JIMMY CARTER

The White House,
May 24, 1977.

Fish & Wildlife

Public Law 85-624

AN ACT

To amend the Act of March 10 1934 to provide for more effective integration of a fish and wildlife conservation program with Federal water resource developments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of March 10, 1934, as amended, and as further amended by this Act may be cited as the "Fish and Wildlife Coordination Act".

SEC 2 The first four sections of the Act entitled "An Act to promote the conservation of wildlife, fish, and game, and for other purposes", approved March 10, 1934 (16 U S C., secs. 661-664, inclusive) are amended to read as follows

"For the purpose of recognizing the vital contribution of our wildlife resources to the Nation, the increasing public interest and significance thereof due to expansion of our national economy and other factors, and to provide that wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation for the purposes of this Act in the United States, its Territories and possessions, the Secretary of the Interior is authorized (1) to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes, in minimizing damages from overabundant species, in providing public shooting and fishing areas, including easements across public lands for access thereto, and in carrying out other measures necessary to effectuate the purposes of this Act; to make surveys and investigations of the wildlife of the public domain, including lands and waters or interests therein acquired or controlled by any agency of the United States; and (3) to accept donations of land and contributions of funds in furtherance of the purposes of this Act

"SEC 2 (a) Except as hereafter stated in subsection (h) of this section, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development

"(b) In furtherance of such purposes, the reports and recommendations of the Secretary of the Interior on the wildlife aspects of such projects, and any report of the head of the State agency exercising administration over the wildlife resources of the State, based on surveys and investigations conducted by the United States Fish and Wildlife Service and such State agency for the purpose of determining the possible damage to wildlife resources and for the purpose of determining means and measures that should be adopted to prevent the loss of or damage to such wildlife resources, as well as to provide concurrently for the development and improvement of such resources, shall be made an integral part of any report prepared or submitted by any agency of the Federal Government responsible for engineering surveys and construction of such projects when such reports are presented to the Congress or to any agency or person having the authority or the power, by administrative action or otherwise, (1) to authorize the construction of water resource development projects or (2) to approve a report on the modification or supplementation of plans for previously authorized projects, to which this Act applies. Recommendations of the Secretary of the Interior shall be as specific as is practicable with respect to features recommended for wildlife conservation and development, lands to be utilized or acquired for such purposes, the results expected, and shall describe the damage to wildlife attributable to the project and the measures proposed for mitigating or compensating for these damages. The reporting officers in project reports of the Federal agencies shall give full consideration to the report and recommendations of the Secretary of the Interior and to any report of the State agency on the wildlife aspects of such projects, and the project plan shall include such justifiable means and measures for wildlife purposes as the reporting agency finds should be adopted to obtain maximum overall project benefits.

"(c) Federal agencies authorized to construct or operate water-control projects are hereby authorized to modify or add to the structures and operations of such projects, the construction of which has not been substantially completed on the date of enactment of the Fish and Wildlife Coordination Act, and to acquire lands in accordance with section 3 of this Act, in order to accommodate the means and measures for such conservation of wildlife resources as an integral part of such projects *Provided* That for projects authorized by a specific Act of Congress before the date of enactment of the Fish and Wildlife Coordination Act (1) such modification or land acquisition shall be compatible with the purposes for which the project was authorized, (2) the cost of such modifications or land acquisition, as means and measures to prevent loss of and damage to wildlife resources to the extent justifiable, shall be an integral part of the cost of such projects; and (3) the cost of such modifications or land acquisition for the development or improvement of wildlife resources may be included to the extent justifiable, and an appropriate share of the cost of any project may be allocated for this purpose with a finding as to the part of such allocated cost, if any, to be reimbursed by non-Federal interests

"(d) The cost of planning for and the construction or installation and maintenance of such means and measures adopted to carry out the conservation purposes of this section shall constitute an integral part of the cost of such projects *Provided*, That such cost attributable to the development and improvement of wildlife shall not extend beyond those necessary for (1) land acquisition, (2) modification of the project, and (3) modification of project operations, but shall not include the operation of wildlife facilities nor the construction of such facilities beyond those herein described *And provided further*, That, in the case of projects authorized to be constructed, operated, and maintained in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat 388, and Acts amendatory thereof or supplementary thereto), the Secretary of the Interior, in addition to allocations made under section 9 of the Reclamation Project Act of 1939 (53 Stat 1187), shall make findings on the part of the estimated cost of the project which can properly be allocated to means and measures to prevent loss of and damage to wildlife resources, which costs shall not be reimbursable, and an appropriate share of the project costs may be allocated to development and improvement of wildlife resources, with a finding as to the part of such allocated costs, if any, to be reimbursed by non-Federal fish and wildlife agencies or interests

"(e) In the case of construction by a Federal agency, that agency is authorized to transfer to the United States Fish and Wildlife Service, out of appropriations or other funds made available for investigations, engineering, or construction, such funds as may be necessary to conduct all or part of the investigations required to carry out the purposes of this section.

"(f) In addition to other requirements, there shall be included in any report submitted to Congress supporting a recommendation for authorization of any new project for the control or use of water as described herein (including any new division of such project or new supplemental works on such project) an estimation of the wildlife benefits or losses to be derived therefrom including benefits to be derived from measures recommended specifically for the development and improvement of wildlife resources, the cost of providing wildlife benefits (including the cost of additional facilities to be installed or lands to be acquired specifically for that particular phase of wildlife conservation relating to the development and improvement of wildlife), the part of the cost of joint-use facilities allocated to wildlife, and the part of such costs, if any, to be reimbursed by non-Federal interests

"(g) The provisions of this section shall be applicable with respect to any project for the control or use of water as prescribed herein, or any unit of such project authorized before or after the date of enactment of the Fish and Wildlife Coordination Act for planning or construction, but shall not be applicable to any project or unit thereof authorized before the date of enactment of the Fish and Wildlife Coordination Act if the construction of the particular project or unit thereof has been substantially completed. A project or unit thereof shall be considered to be substantially completed when sixty percent or more of the estimated construction cost has been obligated for expenditure.

"(h) The provisions of this Act shall not be applicable to those projects for the impoundment of water where the maximum surface area of such impoundments is less than ten acres, nor to activities for or in connection with programs primarily for land management and use carried out by Federal agencies with respect to Federal lands under their jurisdiction.

"SEC. 3. (a) Subject to the exceptions prescribed in section 2 (h) of this Act, whenever the waters of any stream or other body of water are impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, adequate provision, consistent with the primary purposes of such impoundment, diversion, or other control, shall be made for the use thereof, together with any areas of land, water, or interests therein, acquired or administered by a Federal agency in connection therewith, for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon, including the development and improvement of such wildlife resources pursuant to the provisions of section 2 of this Act

Public Law 93-234
93rd Congress, H. R. 8449
December 31, 1973

AN ACT

To expand the national flood insurance by substantially increasing limits of coverage and total amount of insurance authorized to be outstanding and by requiring known flood-prone communities to participate in the program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Flood Disaster Protection Act of 1973".

FINDINGS AND DECLARATION OF PURPOSE

Sec.2.(a) The Congress finds that—

(1) annual losses throughout the Nation from floods and mudslides are increasing at an alarming rate, largely as a result of the accelerating development of, and concentration of population in, areas of flood and mudslide hazards;

(2) the availability of Federal loans, grants, guaranties, insurance, and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of public and of private industrial, commercial, and residential facilities;

(3) property acquired or constructed with grants or other Federal assistance may be exposed to risk of loss through floods, thus frustrating the purpose for which such assistance was extended;

(4) Federal instrumentalities insure or otherwise provide financial protection to banking and credit institutions whose assets include a substantial number of mortgage loans and other indebtedness secured by property exposed to loss and damage from floods and mudslides;

(5) the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood victims, most of whom are still inadequately compensated despite the provision of costly disaster relief benefits; and

(6) it is in the public interest for persons already living in flood-prone areas to have both an opportunity to purchase flood insurance and access to more adequate limits of coverage, so that they will be indemnified for their losses in the event of future flood disasters.

(b) The purpose of this Act, therefore, is to—

(1) substantially increase the limits of coverage authorized under the national flood insurance program;

(2) provide for the expeditious identification of, and the dissemination of information concerning, flood-prone areas;

(3) require States or local communities, as a condition of future Federal financial assistance, to participate in the flood insurance program and to adopt adequate flood plain ordinances with effective enforcement provisions consistent with Federal standards to reduce or avoid future flood losses; and

(4) require the purchase of flood insurance by property owners who are being assisted by Federal programs or by federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards.

Sec.3.(a) As used in this Act, unless the context otherwise requires, the term—

(1) "community" means a State or a political subdivision thereof which has zoning and building code jurisdiction over a particular area having special flood hazards;

(2) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(3) "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States;

(4) "financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 (other than assistance under such Act in connection with a flood);

(5) "Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration; and

(6) "Secretary" means the Secretary of Housing and Urban Development.

(b) The Secretary is authorized to define or redefine, by rules and regulations, any scientific or technical term used in this Act, insofar as such definition is not inconsistent with the purposes of this Act.

TITLE I—EXPANSION OF NATIONAL FLOOD INSURANCE PROGRAM

Sec.101 Amends National Flood Insurance Act of 1968.

REQUIREMENT TO PURCHASE FLOOD INSURANCE

Sec. 102(a) After the expiration of sixty days following the date of enactment of this Act, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Secretary as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property to which such financial assistance relates is, during the anticipated economic or useful life of the project, covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: *Provided*, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

(b) Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation direct such institutions not to make, increase, extend, or renew after the expiration of six months following the date of enactment of this Act any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or to the maximum limit of coverage made available with respect to the particular type of property under the Act, whichever is less.

(c) Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Secretary. The Secretary shall publish and periodically revise the list of States to which this subsection applies.

Sec.103—Sec.111 - Amend National Flood Insurance Act of 1968

TITLE II-DISASTER MITIGATION REQUIREMENTS

NOTIFICATION TO FLOOD-PRONE AREAS

Sec.201(a) Not later than six months following the enactment of this title, the Secretary shall publish information in accordance with subsection 1360(1) of the National Flood Insurance Act of 1968, and shall notify the chief executive officer of each known flood-prone community not already participating in the national flood insurance program of its tentative identification as a community containing one or more areas having special flood hazards.

(b) After such notification, each tentatively identified community shall either (1) promptly make proper application to participate in the national flood insurance program or (2) within six months submit technical data sufficient to establish to the satisfaction of the Secretary that the community either is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The Secretary may, in his discretion, grant a public hearing to any community with respect to which conflicting data exist as to the nature and extent of a flood hazard. If the Secretary decides not to hold a hearing, the community shall be given an opportunity to submit written and documentary evidence. Whether or not such hearing is granted, the Secretary's final determination as to the existence or extent of a flood hazard area in a particular community shall be deemed conclusive for the purposes of this Act if supported by substantial evidence in the record considered as a whole.

(c) As information becomes available to the Secretary concerning the existence of flood hazards in communities not known to be flood prone at the time of the initial notification provided for by subsection (a) of this section he shall provide similar notifications to the chief executive officers of such additional communities, which shall then be subject to the requirements of subsection (b) of this section.

(d) Formally identified flood-prone communities that do not qualify for the national flood insurance program within one year after such notification or by the date specified in section 202, whichever is later, shall thereafter be subject to the provisions of that section relating to flood-prone communities which are not participating in the program.

EFFECT OF NONPARTICIPATION IN FLOOD INSURANCE PROGRAM

Sec.202(a) No Federal officer or agency shall approve any financial assistance for acquisition or construction purposes on and after July 1,1975, for use in any area that has been identified by the Secretary as an area having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

(b) Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation prohibit such institutions on and after July 1, 1975, from making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary as an area having special flood hazards, unless the community in which such area is situated is then participating in the national flood insurance program, except that the prohibition contained in this sentence shall not apply to (1) any loan made to finance the acquisition of a residential dwelling occupied as a residence prior to March 1, 1976, or one year following identification of the area within which such dwelling is located as an area containing special flood hazards, whichever is later, or made to extend, renew, or increase the financing or refinancing in connection with such a dwelling, (2) any loan, which does not exceed an amount prescribed by the Secretary, to finance the acquisition of a building or structure completed and occupied by a small business concern, as defined by the Secretary, prior to January 1, 1976, (3) any loan or loans, which in the aggregate do not exceed $5,000, to finance improvements to or rehabilitation of a building or structure occupied as a residence prior to January 1, 1976, or (4) any loan or loans, which in the aggregate do not exceed an amount prescribed by the Secretary, to finance nonresidential additions or improvements to be used solely for agricultural purposes on a farm."

Sec.203 - 204 - Amend National Flood Insurance Act of 1968.

AUTHORITY TO ISSUE REGULATIONS

Sec 205(a) The Secretary is authorized to issue such regulations as may be necessary to carry out the purpose of this Act.

(b) The head of each Federal agency that administers a program of financial assistance relating to the acquisition, construction, reconstruction, repair, or improvement of publicly or privately owned land or facilities, and each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions, shall, in cooperation with the Secretary, issue appropriate rules and regulations to govern the carrying out of the agency's responsibilities under this Act.

CONSULTATION WITH LOCAL OFFICIALS

Sec. 206. In carrying out his responsibilities under the provisions of this title and the National Flood Insurance Act of 1968 which relate to notification to and identification of flood-prone areas and the application of criteria for land management and use, including criteria derived from data reflecting new developments that may indicate the desirability of modifying elevations based on previous flood studies, the Secretary shall establish procedures assuring adequate consultation with the appropriate elected officials of general purpose local govern-

ments, including but not limited to those local governments whose prior eligibility under the program has been suspended. Such consultation shall include, but not be limited to, fully informing local officials at the commencement of any flood elevation study or investigation undertaken by any agency on behalf of the Secretary concerning the nature and purpose of the study, the areas involved, the manner in which the study is to be undertaken, the general principles to be applied, and the use to be made of the data obtained. The Secretary shall encourage local officials to disseminate information concerning such study widely within the community, so that interested persons will have an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the agency during the course of the study.

Sec.207 - Amends Section 5136 of Revised Statutes (12 U.S.C.24)

Sec.208. - Amends National Housing Act.

Amended August 3, 1976

LEAD-BASED PAINT POISONING PREVENTION ACT

TITLES I & II REPEALED 1979

TITLE III-FEDERAL DEMONSTRATION AND RESEARCH PROGRAM; FEDERAL HOUSING ADMINISTRATION REQUIREMENTS

FEDERAL DEMONSTRATION AND RESEARCH PROGRAM

Sec. 301 (a) The Secretary of Housing and Urban Development, in consultation with the Secretary of Health and Human Services shall develop and carry out a demonstration and research program to determine the nature and extent of the problem of lead based paint poisoning in the United States, particularly in urban areas, including the methods by which the lead based paint hazard can most effectively be removed from interior surfaces, porches, and exterior surfaces of residential housing to which children may be exposed.

"(b) The Chairman of the Consumer Product Safety Commission shall conduct appropriate research on multiple layers of dried paint film, containing the various lead compounds commonly used, in order to ascertain the safe level of lead in residential paint products. No later than December 31, 1974, the Chairman shall submit to Congress a full and complete report of his findings and recommendations as developed pursuant to such programs, together with a statement of any legislation which should be enacted or any changes in existing law which should be made in order to carry out such recommendations.

FEDERAL HOUSING ADMINISTRATION REQUIREMENTS

Sec. 302. The Secretary of Housing and Urban Development (hereafter in this section referred to as the 'Secretary') shall establish procedures to eliminate as far as practicable the hazards of lead based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary. Such procedures shall apply to all such housing constructed prior to 1950 and shall as a minimum provide for (1) appropriate measures to eliminate as fas as practicable immediate hazards due to the presence of paint which may contain lead and to which children may be exposed, and (2) assured notification to purchasers and tenants of such housing of the hazards of lead based paint, of the symptoms and treatment of lead based paint poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards. Such procedures may apply to housing constructed during or after 1950 if the Secretary determines, in his discretion, that such housing presents hazards of lead based paint. The Secretary may establish such other procedures as may be appropriate to carry out the purposes of this section. Further, the Secretary shall establish and implement procedures to eliminate the hazards of lead based paint poisoning in all federally owned properties prior to the sale of such properties when their use is intended for residential habitation.

TITLE IV-PROHIBITION AGAINST USE OF LEAD BASED PAINT IN CONSTRUCTION OF FACILITIES AND THE MANUFACTURE OF CERTAIN TOYS AND UTENSILS

Sec. 401. (a) The Secretary of Health, Education, and Welfare shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the application of lead-based paint to any cooking utensil, drinking utensil manufactured and distributed after January 13, 1971.

(b) The Secretary of Housing and Urban Development shall take steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government, or with Federal assistance in any form after January 13, 1971.

(c) The Consumer Product Safety Commission shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the application of lead-based paint to any toy or furniture article.

TITLE V-GENERAL

DEFINITIONS

Sec. 501. As used in this Act—

(1) The term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(2) The term "units of general local government" means (A) any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, (B) any combination of units of general local government in one or more States, (C) an Indian tribe, or (D) with respect to lead-based paint poisoning elimination activities in their urban areas, the territories and possessions of the United States.

(3)(A) Except as provided in subparagraph (B), the term 'lead-based paint' means any paint containing more than five tenths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

"(B)(i) The Consumer Product Safety Commission shall, during the six-month period beginning on the date of the enactment of the National Health Promotion and Disease Prevention Act of 1976, determine, on the basis of available data and information and after providing opportunity for an oral hearing and considering recommendations of the Secretary of Health, Education, and Welfare (including those of the Center for Disease Control) and of the National Academy of Sciences, whether of not a level of lead paint which is greater than six one-hundredths of 1 per centum but not in excess of five-tenths of 1 per centum is safe. If the Commission determines, in accordance with the preceding sentence, that another level of lead is safe, the term 'lead-based paint' means, with respect to paint which is manufactured after the expiration of the six-month period beginning on the date of the Commission's determination, paint containing by weight (calculated as lead metal) in the total nonvolatile content of the paint more than the level of lead determined by the Commission to be safe or the equivalent measures of lead in the dried film of paint already applied, or both.

(ii) Unless the definition of the term 'lead-based paint' has been established by a determination of the Consumer Product Safety Commission pursuant to clause (i) of this subparagraph, the term 'lead-based paint' means, with respect to paint which is manufactured after the expiration of the twelve-month period beginning such date of enactment, paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

CONSULTATION WITH OTHER DEPARTMENTS AND AGENCIES

Sec. 502. In carrying out their respective authorities under this Act, the Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall each cooperate with and seek the advice of the heads of any other departments or agencies regarding any programs under their respective responsibilities which are related to, or would be affected by, such authority.

APPROPRIATIONS

Sec. 503. (a) There are authorized to be appropriated to carry out this chapter $10,000,000 for the fiscal year 1976, $12,000,000 for the fiscal year 1977, and $14,000,000 for the fiscal year 1978.

(b) Any amounts appropriated under this section shall remain available until expended when so provided in appropriation Acts; and any amounts authorized for one fiscal year but not appropriated may be appropriated for the succeeding fiscal year.

EFFECT UPON STATE LAW

Sec. 504. It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and units of local government insofar as they may now or hereafter provide for a requirement, prohibition, or standard relating to the lead content in paints or other similar surface-coating materials which differs from the provisions of this Act or regulations issued pursuant to this Act. Any law, regulation, or ordinance purporting to establish such different requirement, prohibition, or standard shall be null and void.

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

Subpart A—Notification to Purchasers and Tenants of HUD-Associated Housing Constructed Prior to 1950 of the Hazards of Lead-Based Paint Poisoning

Sec.
35.1 Purpose and scope.
35.3 Definitions.
35.5 Requirements.

Subpart B—Prohibition Against the Use of Lead-Based Paint in HUD-Associated Housing

35.10 Purpose and scope.
35.12 Definitions.
35.14 Requirements.

Subpart C—Elimination of Lead-Based Paint Hazards in HUD-Associated Housing

35.20 Purpose and scope.
35.22 Definitions.
35.24 Requirements.
35.25 Clearinghouse.

Subpart D—Local Codes and Regulations

35.40 Compliance with local laws.
35.42 Requirements.

Subpart E—Elimination of Lead-Based Paint Hazards in Federally-Owned Properties Prior to Sale for Residential Habitation

35.50 Purpose and scope.
35.52 Applicability.
35.54 Definitions.
35.56 Requirements.

Subpart F—Prohibition Against the Use of Lead-Based Paint in Federal and Federally-Assisted Construction or Rehabilitation of Residential Structures

35.60 Scope.
35.61 Definitions.
35.62 Federal construction: prohibition against use of lead-based paint.
35.63 Federally assisted construction; prohibition against use of lead-based paint.
35.64 Reports to the Secretary.
35.65 Authority for Subpart B of these regulations.

APPENDIX I—THE DANGER OF LEAD POISONING FOR HOMEOWNERS
APPENDIX II—THE DANGER OF LEAD POISONING FOR RENTERS

Subpart A—Notification to Purchasers and Tenants of HUD-Associated Housing Constructed Prior to 1950 of the Hazards of Lead-Based Paint Poisoning

§ 35.1 Purpose and scope.

This Subpart A establishes procedures to assure that purchasers and tenants of all HUD-associated housing constructed prior to 1950 are notified of the hazards of lead-based paint which may exist in such housing, of the symptoms and treatment of lead-based paint poisoning and of the precautions to be taken to avoid lead-based paint poisoning.

§ 35.3 Definitions.

For the purposes of this subpart, the following definitions are applicable:

(a) "Act" means the Lead-Based Paint Poisoning Prevention Act, Pub. L. 91-695, 84 Stat. 2078, as amended by Pub. L. 93-151 and Pub. L. 94-317 (42 U.S.C. 4801).

(b) "Department" or "HUD" means the Department of Housing and Urban Development.

(c) "Secretary" means the Secretary of Housing and Urban Development or a HUD official delegated the Secretary's authority with respect to the Act.

(d) "Assistant Secretaries" means the Assistant Secretaries in the Department of Housing and Urban Development.

(e) "HUD-associated housing" means any residential structure as defined in paragraph (f) of this section, which is owned by the Department or Secretary or Housing and Urban Development or financially assisted under any programs administered by the Secretary, when such structures are being constructed, sold, purchased, leased, rehabilitated (including routine maintenance work), modernized or improved with any form of HUD financial assistance whether by grant, loan, advance, housing assistance payments, the proceeds of a HUD-guaranteed loan or a HUD-insured mortgage.

(f) "Residential structure" means any house, apartment or structure intended for human habitation, including any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center, or extended care facilities, college housing, hospitals, group practice facilities and community facilities.

(g) "Applicable surfaces" means all interior surfaces, whether accessible or not, and those exterior surfaces such as stairs, decks, porches, railings, windows and doors which are readily accessible to children under 7 years of age.

(h) "Potential hazard" means paint (which may contain lead) on applicable surfaces which are in a sound, tight condition, but which may become an immediate hazard, as defined in paragraph (i) of this section, by reason of cracking, chipping, scaling, peeling or loosening.

(i) "Immediate hazard" means paint (which may contain lead) on applicable surfaces which is cracking, scaling, chipping, peeling or loose.

(j) "Defective paint condition" means any paint on applicable surfaces which is cracking, scaling, chipping, peeling or loose.

§ 35.5 Requirements.

(a) Purchasers and tenants of HUD-associated housing constructed prior to 1950 shall be notified: (1) That the property was constructed prior to 1950, (2) that the property may contain lead-based paint, (3) of the potential and immediate hazards of lead-based paint, (4) of the symptoms and treatment of lead-based paint poisoning, and (5) of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards). Prospective purchasers and renters shall receive the above notifications prior to purchase or rent. Appendix I, which is attached hereto and made a part hereof, consists of HUD brochures, copies of which shall be used to provide the required notification.

(b) Each Assistant Secretary shall take necessary actions to implement the requirements of paragraph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Such actions shall include the establishment of procedures to: (1) Provide evidence that the information contained in the appropriate HUD brochures, Appendix I, has been received by purchasers and tenants of HUD-associated housing constructed prior to 1950, and to (2) require the inclusion of appropriate provisions in contracts of sale, rental or management of HUD-associated housing to assure the receipt of the information contained in the appropriate HUD brochures by purchasers and tenants of such housing.

Subpart B—Prohibition Against the Use of Lead-Based Paint in HUD-Associated Housing

§ 35.10 Purpose and scope.

This subpart implements the provisions of 42 CFR Part 90 issued by the Secretary of Health, Education, and Welfare pursuant to section 401 of the Act which are applicable to federal agencies and which prohibit the use of lead-based paint on applicable surfaces of residential structures constructed or rehabilitated by the Federal Government or with federal assistance and establishes procedures to prohibit the use of lead-based paint on applicable surfaces in all HUD-associated housing.

§ 35.12 Definition.

The definitions contained in § 35.3 of Subpart A of this part shall apply to this Subpart B and in addition the following definition is applicable to this Subpart B.

(a) "Lead-based paint" as defined in Section 501(3) of the Act as amended by Pub. L. 94-317 (42 U.S.C. 4801, et seq), the National Consumer Information and Health Promotion Act of 1976, means: (1) Any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal in the total non-volatile content of the paint or the equivalent measure

of lead in the dried film of paint already applied or both; or (2) with respect to paint which is manufactured after June 22, 1977 lead-based paint means any paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.

§ 35.14 Requirements.

(a) No office of the Department shall use or permit the use of lead-based paint on applicable surfaces of HUD-associated housing.

(b) Each Assistant Secretary shall implement the requirements of paragraph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Implementation shall include the establishment of procedures to require the inclusion of appropriate provisions in contracts and subcontracts involving HUD-associated housing prohibiting the use of lead-based paint on applicable surfaces of such HUD-associated housing and shall include provisions necessary for enforcement of the prohibition.

Subpart C—Elimination of Lead-Based Paint Hazards in HUD-Associated Housing

§ 35.20 Purpose and scope.

This Subpart C implements the provisions of section 302 of the Act with respect to establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead on applicable surfaces of HUD-associated housing.

§ 35.22 Definitions.

The definitions contained in § 35.3 shall apply to this Subpart C.

§ 35.24 Requirements.

(a) Prior to the occupancy of HUD-associated housing, immediate hazards shall be eliminated by the most practicable means. For this purpose, all defective paint conditions shall be assumed to be immediate hazards.

(b) Each Assistant Secretary shall implement or provide for the implementation of the requirements of paragraph (a) of this section with respect to HUD programs within his/her administrative jurisdiction. Implementation shall include the following:

(1) HUD-associated housing shall be inspected to determine whether or not immediate hazards exist. Responsibility for such inspections shall be as follows.

(i) HUD-owned housing that is to be rehabilitated before sale shall be inspected by local HUD staff or, if appropriate, by the property manager as part of the program for management and disposition of HUD-owned property;

(ii) HUD-owned property that is to be sold in an as-is condition shall be inspected by the local HUD staff or by the property manager as part of the program for management and disposition of HUD-owned property prior to the sale of such property or subsequent to the sale but prior to occupancy thereof for residential use: *Provided, however,* That where properties are conveyed to a unit of state or local government, the state or local governmental body shall be responsible for inspection.

(iii) HUD-owned property that is rented or leased for residential use or will be offered for such rental shall be inspected by the local HUD staff or by the property manager as part of the program for management and disposition of HUD-owned properties.

(iv) Existing housing proposed for HUD-FHA mortgage insurance shall be inspected by the local HUD staff or by fee appraisers where otherwise permitted under existing procedures;

(v) Low-income public housing (including occupied units) shall be inspected by the local housing authority, local public agency or other agency responsible for the maintenance, management, repair and operation of such housing;

(vi) In the rehabilitation of HUD-associated college housing, the architect shall be responsible for inspection of the premises;

(vii) In housing assisted with Community Development funds, the appropriate local public agency, local public body, city demonstration agency or unit of local government or agency thereof shall be responsible for inspection of the premises;

(2) Notwithstanding the requirements of paragraph (b)(1) of this section, in the Section 8 Housing Assistance Payments Program, (sec. 8 of the United States Housing Act of 1937, as amended by Title II, Housing and Community Development Act of 1974), the owner of the assisted housing shall be responsible for providing a certification to the local HUD staff, the local public housing agency or the state housing agency, if any, that the property has been inspected and treated in accordance with the applicable provisions of this part.

(3) Treatment necessary to eliminate immediate hazards shall, as a minimum, consist of the following:

(i) All surface conditions identified as immediate hazards shall be thoroughly cleaned (washed, sanded, scraped, wire brushed or otherwise cleaned) so as to remove all cracking, scaling, peeling, chipping and loose paint on applicable surfaces. Such surfaces that have been so treated shall then be repainted with two coats of a suitable non-leaded paint in accordance with the requirements of § 35.14; or

(ii) Where the paint film integrity of the applicable surface cannot be maintained, the paint shall be completely removed or the surface recovered with a suitable material such as gypsum wallboard, plywood, or plaster before any repainting is undertaken; and

(4) Appropriate provisions for the inspection and elimination of immediate hazards and provisions necessary for enforcement of the requirements shall be included in contracts and subcontracts involving HUD-associated housing.

§ 35.25 Clearinghouse.

In order to facilitate the exchange of information and suggestions with respect to elimination of lead-based paint hazards, the Lead-Based Paint Research Program, Room 8136, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, will serve as a Clearinghouse for suggestions, inquiries and requests for information. The transcript of the hearings held by HUD are available for examination at this office and reports of the research projects undertaken will likewise be made available to interested persons.

Subpart D—Local Codes and Regulations

§ 35.40 Compliance with local laws.

(a) HUD, as owner of federally-owned housing, will comply with State or local laws, ordinances, codes, or regulations governing lead-based paint hazard abatement.

(b) Nothing in this Part 35 is intended to relieve an owner or tenant of HUD-associated housing of any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing lead-based paint hazard abatement.

(c) HUD does not assume any responsibility with respect to inspection, enforcement, interpretation or determination of compliance with such State or local requirements, except that the Federal standard for lead content in paint supersedes any State or local requirement, prohibition, or standard, as provided in section 506 of the Act.

§ 35.42 Requirements

Each Assistant Secretary shall take necessary actions to implement the intent of § 35.40.

Subpart E—Elimination of Lead-Based Paint Hazards in Federally-Owned Properties Prior to Sale for Residential Habitation

§ 35.50 Purpose and scope.

This Subpart E implements the pro-

visions of section 302 of the Act which directs the Secretary to establish and implement procedures to eliminate the hazards of lead-based paint poisoning in all federally-owned properties prior to the sale of such properties when their use is intended for residential habitation.

§ 35.52 Applicability.

The requirements established by this Subpart E are applicable to all federally-owned properties prior to their sale by a federal agency when their use is intended for residential habitation.

§ 35.54 Definitions.

The following are applicable to this Subpart E:

(a) "Federal agency" means the United States or any executive departments, independent establishments, administrative agencies and instrumentalities of the United States, including corporations in which all or substantially all of the stock is beneficially owned by the United States or by any of the foregoing departments, establishments, agencies or instrumentalities.

(b) "Federally-owned properties" means any properties owned by a federal agency as defined in paragraph (a) of this section.

(c) "Act" means the Lead-Based Paint Poisoning Prevention Act, Pub. L. 91-695, 84 Stat. 2078, as amended by Pub. L. 93-151 (42 U.S.C. 4801 et seq.).

(d) "Residential structure" means any house, apartment or structure intended for human habitation, including any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center, or extended care facilities, college housing, hospitals, group practice facilities and community facilities.

(e) "Applicable surfaces" means all interior surfaces, whether accessible or not, and those exterior surfaces such as stairs, decks, porches, railings, windows and doors which are readily accessible to children under 7 years of age.

(f) "Immediate hazard" means paint (which may contain lead) on applicable surfaces which is cracking, scaling, chipping, peeling or loose.

(g) "Defective paint condition" means any paint on applicable surfaces which is cracking, scaling, chipping, peeling or loose.

(h) "Use for residential habitation" means the use of a property as a residential structure as defined in paragraph (d) of this section.

§ 35.56 Requirements

(a) Prior to occupancy of a federally-owned property where its use subsequent to sale is intended for residential habitation, the federal agency selling the property shall assure that the following steps are taken:

(1) The property is inspected to determine whether or not immediate hazards exist; for this purpose all defective paint conditions shall be assumed to be immediate hazards; and

(2) All surface conditions identified as immediate hazards are thoroughly cleaned (washed, sanded, scraped, wire brushed, or otherwise cleaned) so as to remove all cracking, scaling, peeling, chipping and loose paint on applicable surfaces and then repainted with two coats of a suitable non-leaded paint in accordance with the requirements of § 35.14;

(3) Where the paint film integrity of the applicable surface cannot be maintained, the paint shall be completely removed or the surface recovered with a suitable material such as gypsum wallboard, plywood, or plaster before any repainting is undertaken.

(4) Prospective purchasers are provided all notifications described in § 35.5 (a) of this regulation.

(b) The provisions of this Subpart E shall be binding upon all federal agencies as provided by section 302 of the Act; however, nothing contained in this Part 35 shall preclude any federal agency from promulgating such other procedures or additional requirements as may be necessary to implement the provisions of the Act.

Subpart F—Prohibition Against the Use of Lead-Based Paint in Federal and Federally-Assisted Construction or Rehabilitation of Residential Structures

§ 35.60 Scope.

The regulations of this subpart are promulgated to implement section 401 of the Lead-Based Paint Poisoning Prevention Act, as amended, which directs the Secretary of Housing and Urban Development to take such steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance in any form. The regulations are applicable to all Federal agencies.

§ 35.61 Definitions.

The definitions contained in § 35.3 shall apply to this Subpart F and in addition the following definitions are applicable to this Subpart F:

(a) "Federal Agency" means the United States or any executive departments, independent establishments, administrative agencies and instrumentalities of the United States, including corporations in which all or substantially all of the stock is beneficially owned by the United States or by any of the foregoing departments, establishments, agencies or instrumentalities.

(b) "Agency Head" means the principal official of a Federal Agency and includes those persons duly authorized to act in his behalf.

(c) "Lead-based paint" as defined in Section 501(3) of the Act as amended by Pub. L. 94-317 (42 U.S.C. 4801 et seq), the National Consumer Information and Health Promotion Act of 1976, means: (1) Any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal) in the total non-volatile content of the paint or the equivalent measure of lead in the dried film of paint already applied or both; or (2) with respect to paint which is manufactured after June 22, 1977 lead-based paint means any paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.

§ 35.62 Federal construction; prohibition against use of lead-based paint.

No Federal agency shall, in any residential structure constructed or rehabilitated by such agency, use or permit the use of lead-based paint on applicable surfaces.

§ 35.63 Federally assisted construction; prohibition against use of lead-based paint.

(a) Each Agency Head shall issue regulations and take such other steps as in his or her judgment are necessary to prohibit the use of lead-based paint on applicable surfaces of any residential structures constructed or rehabilitated by such agency under any federally assisted program.

(b) Such regulations shall require the inclusion of appropriate provisions in contracts and subcontracts pursuant to which such Federally assisted construction or rehabilitation is performed, prohibiting such use of lead-based paint, and shall include provisions for enforcement of that prohibition.

§ 35.64 Reports to the Secretary.

(a) To assist the Secretary in fulfilling her responsibilities under the Act, each Federal agency shall furnish to the Secretary, not later than 3 months after the effective date of these regulations, a report of the steps it has taken to comply with this Subpart F, Part 35.

(b) Each Federal agency shall submit such additional reports on its activities in the implementation of this part as may be deemed necessary by the Secretary.

§ 35.65 Authority for Subpart B of these regulations.

On or after the effective date of these amended regulations, Subpart F will erve as the authority for Subpar B of these regulations.

Appendix I—The Danger of Lead Poisoning for Homeowners

This housing or apartment was built before 1950. There is a possibility that it may contain lead paints. Lead paint is poisonous if eaten. Many children do eat paint flakes and frequently become very sick. You as a parent are in the best position to safeguard your child's health by preventing him or her from eating paint or paint chips. This pamphlet will answer some of your questions about how to know if your child has been eating lead paint and what to do about it.

Lead poisoning is a serious problem in this country. Each year thousands of children under 7 years of age are poisoned when they eat bits of paint containing lead. Children who eat lead can become mentally retarded, blind, paralyzed, or even die. You can safeguard your child's health by preventing him from eating paint chips which may contain lead. The Department of Housing and Urban Development has prepared this pamphlet to make you aware of the problem of lead paint poisoning in the home.

As a parent, you need to know how to prevent the sickness lead paint can cause. You need to know what to do if your child has lead poisoning.

Your child can get lead poisoning by eating paint, dirt, dust, newspaper, or other non-food items containing lead. The most common cause of lead poisoning is lead-based paint. Children can get dangerous amounts of lead from eating even very small amounts of such paint. Unfortunately, usually there are no obvious signs of lead poisoning. Often lead poisoning can seem like a number of other childhood diseases, but if your child has stomach aches and vomiting, has headaches, a loss of appetite, is cranky, or frequently is too tired to play, he may have lead poisoning. Any or all of these symptoms can be signs of lead poisoning. Often, there are no symptoms at all. If anyone tells you that your child has eaten paint chips or plaster, or if you see any of these signs in your child, he should be tested for lead in his blood as soon as possible. Do not wait too long! Your doctor, local clinic, hospital, or public health department can test your child for lead poisoning. Blood samples can be taken and tested to tell if your child has eaten enough lead to be harmful. In many communities there are blood screening programs operated by local health departments, but screening is usually conducted in older areas of cities where lead-based paint and poisoning is most common. Testing for lead takes only a matter of minutes.

Blood screening programs are usually free and will test children for lead even if they show no symptoms of poisoning and have not been seen eating paint. A number of blood screening programs are supported by the Department of Health, Education, and Welfare, and local health departments. If you are unaware of a screening program in your area, call your public health nurse or social worker at the local health department. If there are no screening programs in your city and you cannot afford testing, the Medicaid program may pay for screening of children both below six years of age and above the age of six, if a doctor says that testing is necessary.

If tests show that your child has a high level of lead in his blood he will need medical supervision and possibly treatment. If treatment is necessary, your doctor, a local clinic, or hospital will be able to remove the lead in his blood. Such treatments may be paid for by Medicaid or your local health department. If testing shows that your child has a lot of lead in his blood, the local health department may send someone to measure the lead paint in your home. Standards for treatment of lead hazards in housing vary from city to city. Follow the directions and guidance of your local health department.

Lead paint is not the only cause of lead poisoning. Your child can be poisoned by eating paint, dirt, or other non-food substances containing lead. Young children put many things besides food in their mouths, but if those objects contain lead, poisoning is possible. Your child can get lead poisoning from eating or chewing on non-food items which contain lead, including dirt, newspaper, and even some pottery, and furniture. Even common household dust sometimes contains high levels of lead. Lead paint which has weathered and fallen to the ground can collect in dust and soil. Exhaust from automobiles which use leaded gasoline also contains lead which can collect in dust and soil. Children should be discouraged from playing in dust and dirt near busy streets where the lead content in soil is likely to be heaviest.

You should stop your child from eating or chewing paint and other objects that may contain lead. Warn your child of the dangers of eating anything other than food if he is old enough to understand. Make sure that the rest of your family and anyone who babysits for you is aware of the lead paint problem and will prevent your child from eating paint. Often children will eat things if they are bored or hungry. Children are safer if they have activities or toys to keep them busy. If your child is not eating properly, you may want to take him to a doctor.

The best way to prevent lead paint poisoning is to keep your home in good shape. The primary source of the lead paint hazard is peeling and flaking paint. Water leaks from faulty plumbing or defective roofs often cause paint to peel or flake from walls and ceilings. Quick repair of such leaks can prevent this.

To prevent peeling paint, most housing units should be repainted every three to five years. Any loose or flaking paint should be removed by scraping or brushing. Cracked walls should be replastered before new paint is applied. If your walls are cracking or peeling now, you may have a lead paint hazard. If you have small children, there are some things you should do immediately to protect them: (1) Get a broom or stiff brush and remove all loose pieces of paint from walls, woodwork, and ceilings; (2) sweep up all the pieces of paint and plaster; (3) put the sweepings in a paper bag or wrap them in newspaper and put these packages in a trash can; (4) be careful not to leave paint chips on the floor. Always keep the floor clear of loose bits of paint and plaster. Sweeping the floors clean of paint chips is simple, but it is most important. Children can pick loose paint off walls, so be extra careful about keeping loose paint from the lower part of walls where your child can reach. As an emergency measure to protect your child, you can cover up the lower part of walls with adhesive backed paper and you can cover the woodwork which your child might chew with adhesive tape or paper. As an emergency measure, you might also move heavy furniture against walls with peeling paint.

Remember that you play a major role as a homeowner and as a parent in the prevention of lead poisoning. Your actions and awareness about the lead problem can make a big difference.

Appendix II—The Danger of Lead Poisoning for Renters

This housing or apartment was built before 1950. There is a possibility that it may contain lead paint. Lead paint is poisonous if eaten. Many children do eat paint flakes and frequently become very sick. You as a parent are in the best position to safeguard your child's health by preventing him or her from eating paint or paint chips. This pamphlet will answer some of your questions about how to know if your child has been eating lead paint and what to do about it.

Lead poisoning is a serious health problem in this country. Each year thousands of children under 7 years of age are poisoned when they eat bits of paint containing lead. Children who eat lead can become mentally retarded, blind, paralyzed, or even die. You can safeguard your child's health by preventing him from eating paint chips which may contain lead. The Department of Housing and Urban Development has prepared this pamphlet to make you aware of the problem of lead paint poisoning in the home.

As a parent, you need to know what to do to prevent the sickness lead paint can cause. You need to know what to do if your child has lead poisoning.

Your child can get lead poisoning by eating paint, dirt, dust, newspaper, or other nonfood items containing lead. The most common cause of lead poisoning is lead based paint. Children can get dangerous amounts of lead from eating even very small amounts of such paint. Unfortunately, usually there are no obvious signs of lead poisoning. Often lead poisoning can seem like a number of other childhood diseases, but if your child has stomach aches and vomiting, has headaches, a loss of appetite, is cranky, or frequently is too tired to play, he may have lead poisoning. Any or all of these symptoms can be signs of lead poisoning. Often, there are no symptoms at all. If anyone tells you that your child has eaten paint chips or plaster, or if you see any of these signs in your child, he should be tested for lead in his blood as soon as possible. Do not wait too long! Your doctor, local clinic, hospital, or public health department can test your child for lead poisoning. Blood samples can be taken and tested to tell if your child has eaten enough lead to be harmful. In many communities there are blood screening programs operated by local health departments, but screening is usually conducted in older areas of cities where lead-based paint and poisoning is most common. Testing for lead takes only a matter of minutes.

Blood screening programs are usually free and will test children for lead even if they show no symptoms of poisoning and have not been seen eating paint. A number of blood screening programs are supported by the Department of Health, Education, and Welfare, and local health departments. If you are unaware of a screening program in your area, call your public health nurse or social worker at the local health department. If there are no screening programs in your city and you cannot afford testing, the Medicaid program may pay for screening of children both below six years of age and above the age of six if a doctor says that testing is necessary.

If tests show that your child has a high level of lead in his blood he will need medical supervision and possibly treatment. If treatment is necessary, your doctor, a local

clinic, or hospital will be able to remove the lead in your child's blood. Such treatments may be paid for by Medicaid or your local health department. If testing shows that your child has a lot of lead in his blood, your local health department may send someone to measure the lead paint in your home, and may require treatment by the owner of the unit of the lead paint hazards on walls and woodwork. Such work is often messy and inconvenient, but it is necessary to prevent the possibility of further sickness from lead. Cooperate with any workmen who are sent to correct the lead condition in your home.

Lead paint is not the only cause of lead poisoning. Your child can be poisoned by eating paint, dirt, or other non-food substances containing lead. Young children put many things besides food in their mouths, but if those objects contain lead, poisoning is possible. A child can get lead poisoning from eating or chewing on non-food items which contain lead, including dirt, newspaper, and even some pottery, and furniture. Even common household dust sometimes contains high levels of lead. Lead paint which has weathered and fallen to the ground can collect in dust and soil. Exhaust from automobiles which used leaded gasoline also contains lead which can collect in dust and soil. Children should be discouraged from playing in dust and dirt near busy streets where the lead content in soil is likely to be heaviest.

You should stop your child from eating or chewing paint and other objects that may contain lead. Warn your child of the dangers of eating anything other than food if he is old enough to understand. Make sure that the rest of your family and anyone who babysits for you is aware of the lead paint problem and will prevent your child from eating paint. Often children will eat things if they are bored or hungry. Children are safer if they have activities or toys to keep them busy. If your child is not eating properly, you may want to take him to a doctor.

The best way to prevent lead paint poisoning is to keep your home in good shape. The primary source of lead paint hazards is peeling and flaking paint. Water leaks from faulty plumbing or defective roofs often cause paint to peel or flake from walls and ceilings. Repair of such leaks can prevent future peeling or flaking. If you have such leaks, or if you have peeling, flaking paint in your apartment, notify the management or landlord.

To prevent peeling paint, most apartments should be repainted every three to five years. It is important to cooperate with the management office when repainting time comes. If your apartment has not been repainted within this period of time, inform the management office, resident manager, or landlord.

You may have a lead paint hazard now if your walls are cracking or peeling. If you have small children, there are somethings you should do immediately to protect them. (1) Notify the management office or resident manager or landlord immediately; (2) get a broom or stiff brush and remove all loose pieces of paint from walls, woodwork, and ceilings; (3) sweep up all the pieces of paint and plaster; (4) put the sweepings in a paper bag or wrap them in newspaper and put these in a trash can; (5) be careful not to leave paint chips on the floor, and keep children away from the dust. Always keep the floor clear of loose bits of paint and plaster. Sweeping the floors clean of paint chips is simple, but it is most important. Children can pick loose paint off walls, so be extra careful about keeping the loose paint from the lower part of walls where your child can reach. As an emergency measure, you might also move heavy furniture against walls with peeling paint.

Remember that you play a major role as a parent in the prevention of lead poisoning. Your actions and awareness about the lead problem can make a big difference.

An Act

To establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969".

PURPOSE

Sec.2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec.101.(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may -

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment with degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall -

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by Title II of this Act, which will insure that presently unqualified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on -

(i) the environmental impact of the proposed action,
(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
(iii) alternatives to the proposed action,
(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by Section 552 of Title 5, United Stated Code, and shall accompany the proposal through the existing agency review processes;

"(D) Any detailed statement required under Subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

"(i) the State agency or official has statewide jurisdiction and has the responsibility for such action.
"(ii) the responsible Federal official furnishes guidance and participates in such preparation,
"(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
"(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction"

(E) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) inititate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by Title II of this Act.

Sec. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President no later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards or environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202. There is created in the Executive Office of the President a Council of Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds: to appraise programs and activities of the Federal Government in the light of the policy set forth in Title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. The Council (a) may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with Section 3109 of Title 5, United States Code (but without regard to the last sentence thereof).

"(b) Notwithstanding Section 3679 (b) of the Revised Statutes (31 U.S.C. 665(b)), the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.".

Sec. 204. It shall be the duty and function of the Council -

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by Section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in Title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in Title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205. In exercising its powers, functions, and duties under this Act, the Council shall -

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation, organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates (5 U.S.C. 5315).

Sec. 207. The Council may accept reimbursements from any private nonprofit organization or from any department,

agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.".

Sec. 209. There are authorized to be appropriated to carry out the provisions of this Act not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

NATIONAL HISTORIC PRESERVATION ACT
OF 1966, AS AMENDED

Section 106

Advisory Council on Historic Preservation, comment on Federal undertakings

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

HOUSING AND URBAN DEVELOPMENT

24 CFR Part 51

[Docket No. R-79-595]

Environmental Criteria and Standards

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This final rule adds a new Part 51, Environmental Criteria and Standards to Title 24 of the CFR. The rule sets forth Subparts A and B covering General Provisions and Noise Abatement and Control respectively.

EFFECTIVE DATE: August 13, 1979.

FOR FURTHER INFORMATION CONTACT: James F. Miller or Gretchen Van Hyning, Office of Environmental Quality, Room 7266, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, 20410 D.C. (202) 755-8909 (this is not a toll-free number).

SUPPLEMENTAL INFORMATION: A Notice of Proposed Rulemaking was published on December 27, 1978 (43 FR 60396) indicating that HUD proposed to add a new Part 51, Environmental Criteria and Standards, to Title 24 of the CFR. The proposed rule would include Subpart A, General Provisions, and Subpart B, Noise Abatement and Control. The Notice invited public comment until January 26, 1979.

Subpart B establishes Departmental standards, requirements, and guidelines on noise abatement and control, replacing and revising the noise policies, standards and procedures previously set forth in HUD Circular 1390.2, which is cancelled when this final rule becomes effective.

Subpart B converts the existing noise policy to regulation format and makes revision and improvements intended to make the policy more flexible and consistent with other Federal agencies' noise programs. Revisions to the current policy (1) bring into conformity, through the use of the day-night average sound level, separate standards and measurements for aircraft and non-aircraft noise; (2) afford Field Offices more flexibility in implementing the policy thus reducing the number of cases having to come into the Region and Headquarters Offices; (3) remove the dual exterior and interior standards, hence, if exterior noise levels are found to be acceptable, the interior noise will be considered acceptable using normal building techniques; and (4) allow easy use of already existing data, particularly from FHWA and DOD. The standards apply primarily to HUD support for new residential construction in certain noise zones—as does the existing policy.

Overall, the comments indicated strong support for the revisions to the noise policy, particularly the use of the day-night average sound level descriptor and the acceptability thresholds used by the Department. The one topic which generated substantial discussion and a divergence of opinion was the methodology for describing "loud implusive sounds."

The following discussion summarizes the significant comments and the changes that were made in the final rule.

1. *Use of the Day-Night Average Sound Level (DNL) to Describe Noise.*—Of the 16 responses, 15 commented on the proposed noise descriptor. Only two of these expressed reservations (one Federal agency and one industry group) about use of the day-night average sound level; these two comments were directed to use of a nighttime penalty in DNL. Both parties recommended substituting a computer based model which itself, among other things, incorporates a nighttime penalty. The same agency has also issued advisory materials containing noise metrics which include the nighttime correction.

The proposed methodology for describing noise has been widely used to relate individual and community reaction to aircraft and road traffic noise, to predict the likelihood and the severity of interference with speech and sleep, and to correlate hearing loss with noise exposure. The simple concept of average sound level must be somewhat refined to account for the fact, documented by most community response and public opinion surveys, that the same noise level is considered more disturbing or annoying during the nighttime than during daytime. Not only do the requirements for undisturbed sleep and relaxation make a lower nighttime noise level desirable, but the exterior background noise level in most communities drops during the night by 10 dB or more and reduced activity inside homes contributes to a general lowering of interior noise levels. Consequently, intrusive noises are more disturbing during the night. To assess nighttime noise events in a way that accounts for their increased potential for causing disturbances a weighting factor of 10 dB is applied to all nighttime noises; i.e., nighttime noises are treated as if they were 10 dB noiser than they actually are. The need for a nighttime correction has also received international concensus through the International Organization for Standardization (ISO).

In view of the acceptance and support for the DNL descriptor, HUD is publishing the final rule using the DNL with the nighttime correction for application of the standards.

2. *Proposed Standards.*—Most responses indicated the appropriateness of the general goals and levels proposed by HUD. Two responses however indicated concern that noise transmitted within multifamily dwellings was not addressed. This problem is however covered in Section 51.101(a)(10); the relevant reference to the Minimum Property Standards for Multifamily Housing is Section 404 on Acoustic Control.

Several comments related to conversion of existing data to DNL. The conversion factors have been clarified in the final rule and the conversion indicates the measures "are approximately equal to" rather than the same. In the final rule one descriptor for aircraft noise was added—(Community Noise Equivalent Level, used in California) and one was deleted (Composite Noise Rating). The Composite Noise Rating methodology was developed in the early 1960's and is subject to error and is used only infrequently and therefore it has been dropped from the final rule (see Section 51.106).

Conversion of highway levels (Section 51.106) to DNL is discussed in the National Cooperative Highway Research Program Report No. 173 on "Highway Noise Generation and Control," published by the Transportation Research Board in 1976.

3. *Analysis of Loud Impulsive Sounds.*—Five responses were directed to the methodology for calculating "loud impulsive sounds." The method for characterizing noise from explosions or sonic booms proposed by HUD in Section 103(b) is consistent with the interim procedures of the Department of Defense. HUD recognizes that the subject is currently undergoing technical debate, but no alternative has emerged upon which the technical community has agreed. This method is likely to be applied mostly in rare instances where sites are proposed in the vicinity of artillery firing ranges or other similar activities. In view of the current debate the final rule has been amended, in the text and in the Appendix, to emphasize that this methodology is to be used on an *interim basis.* When a final procedure is adopted by all the concerned Federal agencies, HUD's rule will be changed to incorporate the agreed upon methodology.

4. *Noise Attenuation.*—It was recommended by one reviewer that noise attenuation be expressed in terms of total sound attenuation rather than the requirement for attenuation measures in addition to the attenuation provided by housing as commonly constructed in the area. The results are essentially the same and both approaches have been considered. It was determined that the suggested approach by the reviewer may overstate the requirements while HUD's policy is to state minimum requirements to provide adequate protection at minimum cost. The final rule was changed to indicate that the additional noise attenuation measures are minimum requirements.

5. *Other Comments.*—Several reviewers provided editorial and technical corrections which have been included in the final rule. Some comments were not relevant to the specific rule, while other suggested that the Department prepare documents setting forth the rationale for the HUD standards and provide guidance to local governments. This work is underway, and a revised "Noise Assessment Guidelines" document should be available by the time the rule becomes effective. A technical background report on the policy is also in preparation and will be available at a later date. Two reviewers also suggested that HUD develop a procedure for notifying purchasers of existing properties if noise levels exceed those of the established regulation. HUD does consider noise as a marketability factor in Section 51.101(a)(4) in determining the amount of insurance or other assistance that may be given but does not propose to include a specific additional notification procedure in the appraisal process.

Some reviewers suggested that HUD take a major role in Federal efforts to control noise. HUD is cooperating with the EPA, DOT and DOD in interagency noise programs; these other agencies have responsibility for controlling noise at the source. HUD's regulations are necessarily limited to programs administered by the Department; however, the standards and guidance material should assist local governmental agencies and others in formulating policies to achieve quieter urban environments.

OTHER INFORMATION: A Finding of Inapplicability with regard to Environmental Impact has been prepared in accordance with HUD's environmental procedures. Copies of the statement and findings are available for inspection and copying in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, Title 24 of the CFR is amended by adding a new Part 51 to read as follows:

PART 51—ENVIRONMENTAL CRITERIA AND STANDARDS

Subpart A—General Provisions

Sec.
51.1 Purpose.
51.2 Authority.
51.3 Responsibilities.
51.4 Program coverage.
51.5 Coordination with environmental clearance requirements.
51.6 [Reserved]

Subpart B—Noise Abatement and Control

51.100 Purpose and authority.
51.101 General policy.
51.102 Responsibilities.
51.103 Criteria and standards.
51.104 Special requirements.
51.105 Exceptions.
51.106 Implementation.

Appendix

Authority: Sec. 7(d). Department of HUD Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 51.1 Purpose.

The Department of Housing and Urban Development is providing program Assistant Secretaries and administrators and field offices with environmental standards, criteria and guidelines for determining project acceptability and necessary mitigating measures to insure that activities assisted by the Department achieve the goal of a suitable living environment.

§ 51.2 Authority.

This Part implements the Department's responsibilities under the following statutes:

(a) The National Housing Act of 1934 (Pub. L. 73–479) which was enacted "to encourage improvements in housing standards and conditions, to provide a system of mutual mortgage insurance, and for other purposes," thus providing the basis for HUD's Minimum Property Standards (MPS) which have evolved as required by legislation over the past 44 years.

(b) The Housing Act of 1949 (Pub. L. 81–171) which sets forth the national goal of "a decent home and a suitable living environment for every American family," affirmed by the Housing and Urban Development Act of 1968 (Pub. L. 90–448).

(c) The Department of Housing and Urban Development Act of 1965 (Pub. L. 89–174) which provides that the Secretary may make such rules and regulations as may be necessary to carry out functions, powers, and duties, and sets forth, as a matter of national purpose, the sound development of the Nation's communities and metropolitan areas.

(d) The National Environmental Policy Act of 1969 (Pub. L. 91–190) which directs Federal agencies to develop procedures to carry out the purposes of the Act.

(e) Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577) which, under Title IV, directs that Federal programs and projects serve the objectives of appropriate land use for housing, commercial, industrial, governmental, institutional, and other purposes to achieve sound and orderly development of all areas, both urban and rural.

§ 51.3 Responsibilities.

(a) *Assistant Secretary for Community Planning and Development.* The Assistant Secretary for Community Planning and Development shall be responsible for administering environmental regulations, and shall provide oversight, interpretation and guidance, and shall update the regulations as required. The Assistant Secretary shall also maintain liaison with other Federal agencies on matters of environmental policy implementation.

(b) *Assistant Secretary for Policy Development and Research.* The Assistant Secretary for Policy Development and Research shall undertake research and demonstration studies necessary for the technical development of environmental standards, criteria, and implementing techniques as a basis for the development and implementation of environmental regulations. The Assistant Secretary shall also maintain liaison with Federal agencies on related technical matters.

(c) *Other Assistant Secretaries, Administrators, and the General Counsel.* Other Assistant Secretaries, Administrators, and the General Counsel shall:

(1) Incorporate adopted environmental regulations by reference into program regulations, guidance documents, and administrative forms and procedures;

(2) Evaluate the effects of, and compliance with Departmental environmental regulations policy and report significant issues and problems to the Assistant Secretary for Community Planning and Development; and

(3) Identify program areas under their jurisdiction in which additional

environmental regulations are needed, and refer them to the Assistant Secretary for Community Planning and Development.

(d) *Regional Administrators, Area Office Managers and Service Office Supervisors.* Regional Administrators, Area Office Managers and Service Office Supervisors shall assure that adopted environmental regulations are implemented in relation to program decisions and recommendations. They shall also monitor projects to assure that mitigation measures are implemented.

§ 51.4 Program coverage.

Environmental standards shall apply to all HUD actions except where special provisions and exemptions are contained in each Subpart.

§ 51.5 Coordination with environmental clearance requirements.

Environmental standards shall be implemented prior to commitment in the decision-making process and, where environmental clearances are required, the decision points shall be identical. Compliance with HUD environmental standards shall be addressed in the environmental clearance process.

§ 51.6 [Reserved]

Subpart B—Noise Abatement and Control

§ 51.100 Purpose and authority.

(a) *Purpose.* The Department of Housing and Urban Development finds that noise is a major source of environmental pollution which represents a threat to the serenity and quality of life in population centers and that noise exposure may be a cause of adverse physiological and psychological effects as well as economic losses.

It is the purpose of this Subpart to:

(1) Call attention to the threat of noise pollution;

(2) Encourage the control of noise at its source in cooperation with other Federal departments and agencies;

(3) Encourage land use patterns for housing and other noise sensitive urban needs that will provide a suitable separation between them and major noise sources;

(4) Generally prohibit HUD support for new construction of noise sensitive uses on sites having unacceptable noise exposure;

(5) Provide policy on the use of structural and other noise attenuation measures where needed; and

(6) Provide policy to guide implementation of various HUD programs.

(b) *Authority.* Specific authorities for noise abatement and control are contained in:

(1) The Noise Control Act of 1972 (Pub. L. 92–574) which directs Federal agencies to administer their programs in ways which reduce noise pollution.

(2) The Quiet Communities Act of 1978 (Pub. L. 95–609) which amended Pub. L. 92–574.

(3) The General Services Administration, Federal Management Circular 75–2: *Compatible Land Uses at Federal Airfields* prescribes the Executive Branch's general policy with respect to achieving compatible land uses on either public or privately owned property at or in the vicinity of Federal airfields.

(4) Section 1113 of the Housing and Urban Development Act of 1965 (Pub. L. 89–117) directs the Secretary "* * * to determine feasible methods of reducing the economic loss and hardships suffered by homeowners as a result of the depreciation in the value of their properties following the construction of airports in the vicinity of their homes, including a study of feasible methods of insulating such homes from the noise of aircraft."

§ 51.101 General policy.

(a) It is HUD's general policy to provide minimum national standards applicable to HUD programs to protect citizens against excessive noise in their communities and places of residence.

(1) *Comprehensive planning assistance.* HUD requires that grantees give adequate consideration to noise exposures and sources of noise as an integral part of the urban environment in HUD assisted comprehensive planning, as follows:

(i) Particular emphasis shall be placed on the importance of compatible land use planning in relation to airports, highways and other sources of high noise.

(ii) Applicants shall take into consideration HUD environmental standards impacting the use of land as required in 24 CFR Part 600.

(iii) Environmental studies, including noise assessments, are allowable costs.

(2) *Community Development Block Grants.* Recipients of community development block grants under the Housing and Community Development Act of 1974 (Pub. L. 93–383), as amended by the Housing and Community Development Act of 1977 (Pub. L. 95–128), must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is proposed in noise exposed areas. Grant recipients shall address deviations from the standards in their environmental reviews as required in 24 CFR Part 58.

Where CDBG activities are planned in a noisy area, and HUD assistance is contemplated later for housing and/or other noise sensitive activities, the CDBG grantee risks denial of the HUD assistance unless the HUD standards are met. Environmental studies, including noise assessments, are allowable costs.

(3) *HUD support for new construction.* HUD assistance for the construction of new noise sensitive uses is prohibited generally for projects with Unacceptable noise exposures and is discouraged for projects with Normally Unacceptable noise exposure. (Standards of acceptability are contained in § 51.103(c).) This policy applies to all HUD programs providing assistance, subsidy or insurance for housing, college housing, mobile home parks, nursing homes, hospitals, and all programs providing assistance or insurance for land development, new communities, redevelopment or any other provision of facilities and services which are directed to making land available for housing or noise sensitive development. The policy does not apply to research demonstration projects which do not result in new construction or reconstruction, flood insurance, interstate land sales registration, or any action or emergency assistance under disaster assistance programs which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance provided that has the effect of restoring facilities substantially as they existed prior to the disaster.

(4) *HUD support for existing construction.* Noise exposure by itself will not result in the denial of HUD support for the resale and purchase of otherwise acceptable existing buildings. However, environmental noise is a marketability factor which HUD will consider in determining the amount of insurance or other assistance that may be given.

(5) *HUD support of modernization and rehabilitation.* For modernization projects located in all noise exposed areas, HUD shall encourage noise attenuation features in alterations. For major or substantial rehabilitation projects in the Normally Unacceptable and Unacceptable noise zones, HUD actively shall seek to have project sponsors incorporate noise attenuation features, given the extent and nature of the rehabilitation being undertaken and the level or exterior noise exposure. In

Unacceptable noise zones, HUD shall strongly encourage conversion of noise-exposed sites to land uses compatible with the high noise levels.

(6) *Research, guidance and publications.* HUD shall maintain a continuing program designed to provide new knowledge of noise abatement and control to public and private bodies, to develop improved methods for anticipating noise encroachment, to develop noise abatement measures through land use and building construction practices, and to foster better understanding of the consequences of noise. It shall be HUD's policy to issue guidance documents periodically to assist HUD personnel in assigning an acceptability category to projects in accordance with noise exposure standards, in evaluating noise attenuation measures, and in advising local agencies about noise abatement strategies. The guidance documents shall be updated periodically in accordance with advances in the state-of-the-art.

(7) *Construction equipment, building equipment and appliances.* HUD shall encourage the use of quieter construction equipment and methods in population centers, the use of quieter equipment and appliances in buildings, and the use of appropriate noise abatement techniques in the design of residential structures with potential noise problems.

(8) *Exterior noise goals.* It is a HUD goal that exterior noise levels do not exceed a day-night average sound level of 55 decibels. This level is recommended by the Environmental Protection Agency as a goal for outdoors in residential areas. The levels recommended by EPA are not standards and do not take into account cost or feasibility. For the purposes of this regulation and to meet other program objectives, sites with a day-night average sound level of 65 and below are acceptable and are allowable (see Standards in § 51.103(c)).

(9) *Interior noise goals.* It is a HUD goal that the interior auditory environment shall not exceed a day-night average sound level of 45 decibels. Attenuation measures to meet these interior goals shall be employed where feasible. Emphasis shall be given to noise sensitive interior spaces such as bedrooms. Minimum attenuation requirements are prescribed in § 51.104(a).

(10) *Acoustical privacy in multifamily buildings.* HUD shall require the use of building design and acoustical treatment to afford acoustical privacy in multifamily buildings pursuant to requirements of the Minimum Property Standards.

§ 51.102 Responsibilities.

(a) *Authority to approve projects.* (1) Decisions on proposed projects with acceptable noise exposures shall be delegated to the program personnel within field offices, including projects where increased noise levels are considered acceptable because of non-acoustic benefits under § 51.105(a). Field office program personnel may also approve projects in normally unacceptable noise exposed areas where adequate sound attenuation is provided and where the project does not require an Environmental Impact Statement under § 51.104(b).

(2) Other approvals in normally unacceptable noise exposed areas require the concurrence of the Regional Administrator.

(3) Requests for approvals of projects or portions of projects with unacceptable noise exposures shall be referred through the Regional Office to the Assistant Secretary for Community Planning and Development for approval pursuant to § 51.104(b).

(4) In cases where the Regional Administrator determines that an important precedent or issue is involved, such cases shall be referred with recommendations to the Assistant Secretary for Community Planning and Development.

(b) *Surveillance of noise problem areas.* Appropriate field staff shall maintain surveillance of potential noise problem areas and advise local officials, developers, and planning groups of the unacceptability of sites because of noise exposure at the earliest possible time in the decision process. Every attempt shall be made to insure that applicants' site choices are consistent with the policy and standards contained herein.

(c) *Notice to applicants.* At the earliest possible stage, HUD program administrators shall:

(1) Determine the suitability of the acoustical environment of proposed projects;

(2) Notify applicants of any adverse or questionable situations; and

(3) Assure that prospective applicants are apprised of the standards contained herein so that future site choices will be consistent with these standards.

(d) *Technical assistance.* Technical assistance in the measurement, estimation, interpretation, or prediction of noise exposure is available from the Office of Community Planning and Development and the Office of Policy Development and Research. Field office questions shall be forwarded through the Regional Office to the Assistant Secretary for Community Planning and Development or his designee.

(e) *Interdepartmental coordination.* Regional Administrators shall foster appropriate coordination between field offices and other departments and agencies, particularly the Environmental Protection Agency, the Department of Transportation, Department of Defense representatives, and the Veterans Administration. HUD staff shall utilize the acceptability standards in commenting on the prospective impacts of transportation facilities and other noise generators in the Environmental Impact Statement review process.

§ 51.103 Criteria and standards.

These standards apply to all programs as indicated in § 51.101.

(a) *Measure of external noise environments.* The magnitude of the external noise environment at a site is determined by the value of the day-night average sound level produced as the result of the accumulation of noise from all sources contributing to the external noise environment at the site. Day-night average sound level, abbreviated as DNL and symbolized as L_{dn}, is the 24-hour average sound level, in decibels, obtained after addition of 10 decibels to sound levels in the night from 10 p.m. to 7 a.m. Mathematical expressions for average sound level and day-night average sound level are stated in the Appendix.

(b) *Loud impulsive sounds.* On an interim basis, when loud impulsive sounds, such as explosions or sonic booms, are experienced at a site, the day-night average sound level produced by the loud impulsive sounds alone shall have 8 decibels added to it in assessing the acceptability of the site (see Appendix). Alternatively, the C-weighted day-night average sound level (L_{cdn}) may be used without the 8 decibel addition, as indicated in Section 51.106(a)(3).

Methods for assessing the contribution of loud impulsive sounds to day-night average sound level at a site and mathematical expressions for determining whether a sound is classed as "loud impulsive" are provided in the Appendix.

(c) *Exterior standards.* The degree of acceptability of the noise environment at a site is determined by the sound levels external to buildings or other facilities containing noise sensitive uses. The standards shall usually apply at a location 2 meters (6.5 feet) from the building housing noise sensitive activities in the direction of the predominant noise source. Where the

building location is undetermined, the standards shall apply 2 meters (6.5 feet) from the building setback line nearest to the predominant noise source. The standards shall also apply at other locations where it is determined that quiet outdoor space is required in an area ancillary to the principal use on the site.

The noise environment inside a building is considered acceptable if (a) the noise environment external to the building complies with these standards, and (b) the building is constructed in a manner common to the area or, if of uncommon construction, has at least the equivalent noise attenuation characteristics.

Site Acceptability Standards

	Day-night average sound level (in decibels)	Special approvals and requirements
Acceptable	Not exceeding 65 dB(1)	None
Normally Unacceptable	Above 65 dB but not exceeding 75 dB	Special Approvals (2) Environmental Review (3) Attenuation (4)
Unacceptable	Above 75 dB	Special Approvals (2) Environmental Review (3) Attenuation (5)

Notes —(1) Acceptable threshold may be shifted to 70 dB in special circumstances pursuant to Section 51 105(a)
(2) See Section 51 104(b) for requirements.
(3) See Section 51 104(b) for requirements
(4) 5 dB additional attenuation required for sites above 65 dB but not exceeding 70 dB and 10 dB additional attenuation required for sites above 70 dB but not exceeding 75 dB (See Section 51 104(a))
(5) Attenuation measures to be submitted to the Assistant Secretary for CPD for approval on a case-by-case basis.

§ 51.104 Special requirements.

(a) *Noise attenuation.* Noise attenuation measures are those required in addition to attenuation provided by buildings as commonly constructed in the area, and requiring open windows for ventilation. Measures that reduce external noise at a site shall be used wherever practicable in preference to the incorporation of additional noise attenuation in buildings. Building designs and construction techniques that provide more noise attenuation than typical construction may be employed also to meet the noise attenuation requirements.

(1) *Normally Unacceptable noise zone.* Approvals in this zone require a minimum of 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 decibels but does not exceed 70 decibels, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 decibels but does not exceed 75 decibels.

(2) *Unacceptable noise zone.* Noise attenuation measures require the approval of the Assistant Secretary for Community Planning and Development. (See § 51.104(b)(2).)

(b) *Special Approvals and Environmental Review Requirements.* Environmental clearances shall be conducted pursuant to the requirements of HUD's Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality (38 FR 19182 as amended) or other environmental regulations which may be issued by the Department. The Special Clearance and Environmental Impact Statement (EIS) threshold requirements are hereby modified for all projects proposed in the Normally Unacceptable and Unacceptable noise exposure zones as follows:

(1) *Normally Unacceptable noise zone.* (i) All projects located in the Normally Unacceptable Noise Zone require a Special Environmental Clearance except an EIS is required for a proposed project located in a largely undeveloped area, or where the HUD action is likely to encourage the establishment of incompatible land use in this noise zone.

(ii) When an EIS is required, the concurrence of the Regional Administrator is also required before a project can be approved. For the purposes of this paragraph, an area will be considered as largely undeveloped unless the area within a 2-mile radius of the project boundary is more than 50 percent developed for urban uses and infrastructure (particularly water and sewers) is available and has capacity to serve the project.

(iii) All other projects in the Normally Unacceptable zone require a Special Environmental Clearance, except where an EIS is required for other reasons pursuant to HUD environmental policies.

(2) *Unacceptable noise zone.* An EIS is required prior to the approval of projects with unacceptable noise exposure. Projects in or partially in an Unacceptable Noise Zone shall be submitted through the Regional Administrator to the Assistant Secretary for Community Planning and Development for approval. The Assistant Secretary may waive the EIS requirement in cases where noise is the only environmental issue and no outdoor sensitive activity will take place on the site. In such cases, a Special Environmental Clearance is required.

§ 51.105 Exceptions.

(a) *Flexibility for non-acoustic benefits.* Where it is determined that program objectives cannot be achieved on sites meeting the acceptability standard of 65 decibels, the Acceptable Zone may be shifted to L_{dn} 70 on a case-by-case basis if all the following conditions are satisfied:

(1) The project does not require an Environmental Impact Statement under provisions of section 104(b)(1) and noise is the only environmental issue.

(2) The project has received a Special Environmental Clearance and has received the concurrence of the Environmental Clearance Officer.

(3) The project meets other program goals to provide housing in proximity to employment, public facilities and transportation.

(4) The project is in conformance with local goals and maintains the character of the neighborhood.

(5) The project sponsor has set forth reasons, acceptable to HUD, as to why the noise attenuation measures that would normally be required for new construction in the L_{dn} 65 to L_{dn} 70 zone cannot be met.

(6) Other sites which are not exposed to noise above L_{dn} 65 and which meet program objectives are generally not available.

The above factors shall be documented and made part of the project file.

§ 51.106 Implementation.

(a) *Use of available data.* HUD field staff shall make maximum use of noise data prepared by others when such data are determined to be current and adequately projected into the future and are in terms of the following:

(1) *Sites in the vicinity of airports.* The noise environment around airports is described sometimes in terms of Noise Exposure Forecasts, abbreviated as NEF or, in the State of California, as

Community Noise Equivalent Level, abbreviated as CNEL. The noise environment for sites in the vicinity of airports for which day-night average sound level data are not available may be evaluated from NEF or CNEL analyses using the following conversions to DNL:

$DNL \approx NEF + 35$
$DNL \approx CNEL$

(2) *Sites in the vicinity of highways.* Highway projects receiving Federal aid are subject to noise analyses under the procedures of the Federal Highway Administration.

Where such analyses are available they may be used to assess sites subject to the requirements of this standard. The Federal Highway Administration employs two alternate sound level descriptors: (a) The A-weighted sound level not exceeded more than 10 percent of the time for the highway design hour traffic flow, symbolized as L_{10}; or (b) the equivalent sound level for the design hour, symbolized as L_{eq}. The day-night average sound level may be estimated from the design hour L_{10} or L_{eq} values by the following relationships, provided heavy trucks do not exceed 10 percent of the total traffic flow in vehicles per 24 hours and the traffic flow between 10 p.m. and 7 a.m. does not exceed 15 percent of the average daily traffic flow in vehicles per 24 hours:

$DNL \approx L_{10}$ (design hour)—3 decibels
$DNL \approx L_{eq}$ (design hour) decibels

Where the auto/truck mix and time of day relationships as stated in this Section do not exist, the HUD Noise Assessment Guidelines or other noise analysis shall be used.

(3) *Sites in the vicinity of installations producing loud impulsive sounds.* Certain Department of Defense installations produce loud impulsive sounds from artillery firing and bombing practice ranges. Noise analyses for these facilities sometimes encompass sites that may be subject to the requirements of this standard. Where such analyses are available they may be used on an interim basis to establish the acceptability of sites under this standard.

The Department of Defense uses day-night average sound level based on C-weighted sound level, symbolized L_{Cdn}, for the analysis of loud impulsive sounds. Where such analyses are provided, the 8 decibel addition specified in 51.103(b), is not required, and the same numerical values of day-night average sound level used on an interim basis to determine site suitability for non-impulsive sounds apply to the L_{Cdn}.

(4) *Use of areawide acoustical data.* HUD encourages the preparation and use of areawide acoustical information, such as noise contours for airports. Where such new or revised contours become available for airports (civil or military) and military installations they shall first be referred to the Regional Office (Environmental Clearance Officer) for review, evaluation and decision on appropriateness for use by HUD. The Regional Office shall submit revised contours to the Assistant Secretary of Community Planning and Development for review, evaluation and decision whenever the area affected is changed by 20 percent or more, or whenever it is determined that the new contours will have a significant effect on HUD programs, or whenever the contours are not provided in a methodology acceptable under § 51.106(a)(1) or in other cases where the Regional Office determines that Headquarters review is warranted. For other areawide acoustical data, review is required only where existing areawide data are being utilized and where such data have been changed to reflect changes in the measurement methodology or underlying noise source assumptions. Requests for determination on usage of new or revised areawide data shall include the following:

(i) Maps showing old, if applicable, and new noise contours, along with brief description of data source and methodology.

(ii) Impact on existing and prospective urbanized areas and on development activity.

(iii) Impact on HUD-assisted projects currently in processing.

(iv) Impact on future HUD program activity. Where a field office has determined that immediate approval of new areawide data is necessary and warranted in limited geographic areas, the request for approval should state the circumstances warranting such approval. Actions on proposed projects shall not be undertaken while new areawide noise data are being considered for HUD use except where the proposed location is affected in the same manner under both the old and new noise data.

(b) *Site assessments.* Compliance with the standards contained in § 51.103(c) shall, where necessary, be determined using noise assessment guidelines, handbooks, technical documents and procedures issued by the Department.

(c) *Variations in site noise levels.* In many instances the noise environment will vary across a site, with portions of the site being in an Acceptable noise environment and other portions in a Normally Unacceptable noise environment. The standards in § 51.103(c) shall apply to the portions of a building or buildings used for residential purposes and for ancillary noise sensitive open spaces.

(d) *Noise measurements.* Where noise assessments result in a finding that the site is borderline or questionable, or is controversial, noise measurements may be performed. Where it is determined that noise measurements are required, such measurements will be conducted in accordance with methods and measurement criteria established by the Department. Locations for noise measurements will depend on the location of noise sensitive uses that are nearest to the predominant noise source (see § 51.103(c)).

(e) *Projections of noise exposure.* In addition to assessing existing exposure, future conditions should be projected. To the extent possible, noise exposure shall be projected to be representative of conditions that are expected to exist at a time at least 10 years beyond the date of the project or action under review.

(f) *Reduction of site noise by use of berms and/or barriers.* If it is determined by adequate analysis that a berm and/or barrier will reduce noise at a housing site, and if the barrier is existing or there are assurances that it will be in place prior to occupancy, the environmental noise analysis for the site may reflect the benefits afforded by the berm and/or barrier.

In the environmental review process under § 51.104(b), the location height and design of the berm and/or barrier shall be evaluated to determine its effectiveness, and impact on design and aesthetic quality, circulation and other environmental factors.

Appendix—definition of acoustical quantities

1. *Sound Level.* The quantity in decibels measured with an instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters S1.4–1971. Fast time-averaging and A-frequency weighting are to be used, unless others are specified. The sound level meter with the A-weighting is progressively less sensitive to sounds of frequency below 1,000 hertz (cycles per second), somewhat as is the ear. With fast time averaging the sound level meter responds particularly to recent sounds almost as quickly as does the ear in judging the loudness of a sound.

2. *Average Sound Level.* Average sound level, in decibels, is the level of the mean-square A-weighted sound pressure during the stated time period, with reference to the square of the standard reference sound pressure of 20 micropascals.

Day-night average sound level, abbreviated as DNL, and symbolized mathematically as L_{dn} is defined as:

$$L_{dn} = 10 \log_{10}\left[\frac{1}{86400}\left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10}\,dt + \int_{0700}^{2200} 10^{L_A(t)/10}\,dt + \int_{2200}^{2400} 10^{[L_A(t)+10]/10}\,dt\right)\right]$$

Time t is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. $L_A(t)$ is the time varying value of A-weighted sound level, the quantity in decibels measured by an instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters S1.4–1971.

3. *Loud Impulsive Sounds.* When loud impulsive sounds such as sonic booms or explosions are anticipated contributors to the noise environment at a site, the contribution to day-night average sound level produced by the loud impulsive sounds shall have 8 decibels added to it in assessing the acceptability of a site.

A loud impulsive sound is defined for the purpose of this regulation as one for which:

(i) The sound is definable as a discrete event wherein the sound level increases to a maximum and then decreases in a total time interval of approximately one second or less to the ambient background level that exists without the sound; and

(ii) The maximum sound level (obtained with slow averaging time and A-weighting of a Type 1 sound level meter whose characteristics comply with ANSI S1.4–1971) exceeds the sound level prior to the onset of the event by at least 6 decibels; and

(iii) The maximum sound level obtained with fast averaging time of a sound level meter exceeds the maximum value obtained with slow averaging time by at least 4 decibels.

Issued at Washington, D.C., on July 5, 1979.

Patricia Roberts Harris,

Secretary of Housing and Urban Development.

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§ 800.8 *Programmatic Memoranda of Agreement.*

(a) *Application.* At the request of an Agency Official, the Council will consider execution of a Programmatic Memorandum of Agreement to fulfill an agency's responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under these regulations. Within 30 days after the request, the Executive Director will notify the agency official whether a Programmatic Memoranda of Agreement may be used. Generally, Programmatic Memorandum of Agreement may be used in the following types of situations:

(1) Non-site-specific undertakings, including Federal approval of State plans pursuant to Federal legislation, development of comprehensive or area-wide plans, agency recommendations for legislation, and the establishment or modification of regulations and planning guidelines.

(2) Undertakings that are repetitive in nature and have essentially the same effect on National Register or eligible properties.

(3) Programs that are designed to further the preservation and enhancement of National Register or eligible properties.

(4) Programs with statutory time limits for project application and approval that would not permit compliance with these regulations in the normal manner.

(b) *Consultation Process.* Upon determination by the Executive Director that a Programmatic Memorandum of Agreement is appropriate, the Agency Official and the Executive Director shall consult to develop a Programmatic Memorandum of Agreement. When the Agreement will affect a particular State or States, the appropriate State Historic Preservation Officer may be a party to the consultation. When the Agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative may be a party to the consultation. The Executive Director may invite other parties, including other Federal agencies with responsibilities which may be affected by the Agreement, to participate in the consultation and may hold a Public Information Meeting (see § 800.6(b)(3)) on the proposed Agreement.

(c) *Preparation of the Agreement.* It shall be the responsibility of the Executive Director to prepare each Agreement. At least 30 days before executing an Agreement, the Council shall publish notice of the proposed Agreement in the FEDERAL REGISTER inviting comments from Federal, State, and local agencies and the public. The Council will make copies available to interested parties and to appropriate A-95 clearinghouses.

(d) *Execution of the Agreement.* After consideration of comments received and completion of any necessary revisions, the Executive Director, the Agency Official, and other parties, if appropriate, shall sign the Agreement and it shall be sent to the Chairman for ratification.

(e) *Chairman's Review.* Upon receipt of a signed Agreement, the Chairman shall review the Agreement and within 30 days shall take one of the following actions:

(1) Ratify the Agreement, at which time it will take effect.

(2) Submit the Agreement to the full Council for approval.

(3) Disapprove the Agreement.

(f) *Effect of the Agreement.* An approved Programmatic Memorandum of Agreement shall constitute the comments of the Council on all individual undertakings carried out pursuant to the terms of the Agreement and, unless otherwise provided by the Agreement, shall satisfy the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations for all undertakings carried out in accordance with the Agreement.

(g) *Notice.* Notice of an approved Programmatic Agreement shall be published by the Council in the FEDERAL REGISTER. Copies shall be distributed through appropriate A-95 clearinghouses and the consulting parties shall make copies readily available to the public. The Programmatic Memorandum of Agreement should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(h) *Term.* Unless otherwise provided by the Agreement, duly executed Programmatic Memorandum of Agreement shall remain in effect until revoked by any one of the signatories. The Agency Official shall submit a report annually to the Executive Director and other signatories on all actions taken pursuant to the Agreement, including any recommendations for modification or termination of the Agreement. The Executive Director and other signatories shall review the report and determine whether modification or termination of the Agreement is appropriate.

§ 800.9 Coordination With Agency Requirements Under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Section 101(b)(4) of the National Environmental Policy Act (NEPA) declares that one objective of national environmental policy is to "preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice." In order to meet this objective, Federal agencies should coordinate compliance with the separate responsibilities of the National Historic Preservation Act and Executive Order 11593 to ensure that historic and cultural properties are given proper consideration in the preparation of environmental assessments and environmental impact statements. Agency obligations pursuant to the National Historic Preservation Act and Executive Order 11593 are independent from NEPA requirements and must be complied with even when an environmental impact statement is not required. Agencies should also be aware that the threshold for compliance with Section 106 and the Executive Order is less than that for preparation of an environmental impact statement. The former applies to any Federal, federally assisted or federally licensed undertaking having an effect on a National Register or eligible property, while the latter extends only to major Federal actions significantly affecting the human environment. Where both NEPA and the Act or Executive Order are applicable, the Council on Environmental Quality, in its National Environmental Policy Act—Regulations (40 CFR 1502.25), directs that draft environmental impact statements prepared under Section 102(2)(C) of NEPA shall, to the fullest extent possible be prepared with and integrated with other environmental impact analyses and related surveys and studies required by other authorities—such as the National Historic Preservation Act and Executive Order 11593. Preparation of a draft environmental impact statement may fulfill the requirements for reports and documentation under these authorities.

Circulation of the statement for comment pursuant to Section 102(2)(C) of NEPA shall constitute a request for Council comments under Section 800.4 of these regulations if Federal agencies so request in cover letters circulated with draft environmental impact statements. To coordinate the independent responsibilities of the Act and NEPA, Federal agencies should undertake compliance with these regulations whenever National Register or eligible properties may be affected by an undertaking. The following subsections indicate the appropriate means of coordinating the substance and timing of agency compliance with NEPA, Section 106, and Section 2(b). The Council will review agency environmental impact statements in accordance with this section. Adherence to these provisions will provide Federal agencies with an adequate record of the consideration of National Register and eligible properties during the planning process will facilitate the production of a single document to meet the require-

RESERVOIR SALVAGE ACT

PUBLIC LAW 86-523; 74 STAT. 220

(S. 1185)

An Act to provide for the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

It is the purpose of this Act to further the policy set forth in the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (16 U.S.C. 461-467), by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of (1) flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such agency or (2) any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program."

Sec. 2. Before any agency of the United States shall undertake the construction of a dam, or issue a license to any private individual or corporation for the construction of a dam, it shall give written notice to the Secretary of the Interior (hereafter referred to as the Secretary) setting forth the site of the proposed dam and the approximate area to be flooded and otherwise changed if such construction is undertaken: *Provided*, That with respect to any floodwater retarding dam which provides less than five thousand acre-feet of detention capacity and with respect to any other type of dam which creates a reservoir of less than forty surface acres the provisions of this section shall apply only when the constructing agency, in its preliminary surveys, finds, or is presented with evidence that historical or archeological materials exist or may be present in the proposed reservoir area.

Sec. 3. (a) Whenever any Federal agency finds, or is notified in writing, by an appropriate historical or archeological authority that its activities in connection with any Federal construction project or federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or activity, undertake such activities. Copies of reports of any investigations made pursuant to this section shall be submitted to the Secretary, who shall make them available to the public for inspection and review.

(b) Whenever any Federal agency provides financial assistance by loan, grant, or otherwise to any private person, association, or public entity, the Secretary, if he determines that significant scientific, prehistorical, historical, or archeological data might be irrevocably lost or destroyed, may with funds appropriated expressly for this purpose conduct, with the consent of all persons, associations, or public entities having a legal interest in the property involved, a survey of the affected site and undertake the recovery, protection, and preservation of such data (including analysis and publication). The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or any nonfederally owned lands.

Sec. 4. (a) The Secretary, upon notification, in writing, by any Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is being or may be irrevocably lost or destroyed by any Federal or federally assisted or licensed project, activity, or program, shall, if he determines that such data is significant and is being or may be irrevocably lost or destroyed and after reasonable notice to the agency responsible for funding or licensing such project, activity, or program, conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being, but should be, recovered and preserved in the public interest.

(b) No survey or recovery work shall be required pursuant to this section which, in the determination of the head of the responsible agency, would impede Federal or federally assisted or licensed projects or activities undertaken in connection with any emergency, including projects or activities undertaken in anticipation of, or as a result of, a natural disaster.

(c) The Secretary shall initiate the survey or recovery effort within sixty days after notification to him pursuant to subsection (a) of this section or within such time as may be agreed upon with the head of the agency responsible for funding or licensing the project, activity, or program in all other cases.

(d) The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or nonfederally owned land.

Sec. 5. (a) The Secretary shall keep the agency responsible for funding or licensing the project notified at all times of the progress of any survey made under this Act or of any work undertaken as a result of such survey, in order that there will be as little disruption or delay as possible in the carrying out of the functions of such agency and the survey and recovery programs shall terminate at a time mutually agreed upon by the Secretary and the head of such agency unless extended by mutual agreement.

(b) The Secretary shall consult with any interested Federal and State agencies, educational and scientific organizations, and private institutions and qualified individuals, with a view to determining the ownership of and the most appropriate repository for any relics and specimens recovered as a result of any work performed as provided for in this section.

(c) The Secretary shall coordinate all Federal survey and recovery activities authorized under this Act and shall submit an annual report at the end of each fiscal year to the Committee on Interior and Insular Affairs of the House of Representatives and Committee on Energy and Natural Resources of the Senate indicating the scope and effectiveness of the program, the specific pro-

jects surveyed and the results produced, and the costs incurred by the Federal Government as a result thereof.

Sec. 6. In the administration of this Act, the Secretary may —

(1) enter into contracts or make cooperative agreements with any Federal or State agency, any educational or scientific organization, or any institution, corporation, association, or qualified individual; and

(2) obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5 United States Code; and

(3) accept and utilize funds made available for salvage archeological purposes by any private person or corporation or transferred to to him by any Federal agency.

Sec. 7. (a) To carry out the purposes of this Act, any Federal agency responsible for a construction project may assist the Secretary and/or it may transfer to him such funds as may be agreed upon, but not more than 1 per centum of the total amount authorized to be appropriated for such project, except that the 1 per centum limitation of this section shall not apply in the event that the project involves $50,000 or less: *Provided,* That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

(b) For the purposes of subsection 3(b), there are authorized to be appropriated such sums as may be necessary, but not more than $500,000 in fiscal year 1974; $1,000,000 in fiscal year 1975; $1,500,000 in fiscal year 1976; $1,500,000 in fiscal year 1977; $1,500,000 in fiscal year 1978; $500,000 in fiscal year 1979; $1,000,000 in fiscal year 1980; $1,500,000 in fiscal year 1981; $1,500,000 in fiscal year 1982; and $1,500,000 in fiscal year 1983.

(c) For the purposes of subsection 4(a), there are authorized to be appropriated not more than $2,000,000 in fiscal year 1974; $2,000,000 in fiscal year 1975; $3,000,000 in fiscal year 1976; $3,000,000 in fiscal year 1977; $3,000,000 in fiscal year 1978; $3,000,000 in fiscal year 1979; $3,000,000 in fiscal year 1980; $3,500,000 in fiscal year 1981; $3,500,000 in fiscal year 1982; and $4,000,000 in fiscal year 1983.

(d) Beginning fiscal year 1979, sums appropriated for purposes of section 7 shall remain available until expended.

Sec. 8. As used in this Act, the term 'State' includes the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SAFE DRINKING WATER ACT

For Legislative History of Act, see p. 6454

PUBLIC LAW 93-523; 88 STAT. 1660

[S. 433]

An Act to amend the Public Health Service Act to assure that the public is provided with safe drinking water, and for other purposes.

INTERIM REGULATION OF UNDERGROUND INJECTIONS

"SEC. 1424. (a)(1) Any person may petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator under subsection (b). The Administrator may so designate an area within a State if he finds that the area has one aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

"(2) Upon receipt of a petition under paragraph (1) of this subsection, the Administrator shall publish it in the Federal Register and shall provide an opportunity to interested persons to submit written data, views, or arguments thereon. Not later than the 30th day following the date of the publication of a petition under this paragraph in the Federal Register, the Administrator shall either make the designation for which the petition is submitted or deny the petition.

"(b)(1) During the period beginning on the date an area is designated under subsection (a) and ending on the date the applicable underground injection control program covering such area takes effect, no new underground injection well may be operated in such area unless the Administrator has issued a permit for such operation.

"(2) Any person may petition the Administrator for the issuance of a permit for the operation of such a well in such an area. A petition submitted under this paragraph shall be submitted in such manner and contain such information as the Administrator may require by regulation. Upon receipt of such a petition, the Administrator shall publish it in the Federal Register. The Administrator shall give notice of any proceeding on a petition and shall provide opportunity for agency hearing. The Administrator shall act upon such petition on the record of any hearing held pursuant to the preceding sentence respecting such petition. Within 120 days of the publication in the Federal Register of a petition submitted under this paragraph, the Administrator shall either issue the permit for which the petition was submitted or shall deny its issuance.

"(3) The Administrator may issue a permit for the operation of a new underground injection well in an area designated under subsection (a) only if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

"(c) Any person who operates a new underground injection well in violation of subsection (b), (1) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs, or (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (1), be fined not more than $10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b), he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

"(d) For purposes of this section, the term 'new underground injection well' means an underground injection well whose operation was not approved by appropriate State and Federal agencies before the date of the enactment of this title.

"(e) If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

"(e) If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Sec.

257.1 Scope and purpose.
257.2 Definitions.
257.3 Criteria for classification of solid waste disposal facilities.
257.3-1 Environmentally sensitive areas.
257.3-2 Surface water.
257.3-3 Ground water.
257.3-4 Air.
257.3-5 Application to land used for the production of food chain crops.
257.3-6 Disease vectors.
257.3-7 Safety.
257.4 Effective date.

AUTHORITY: Sec. 1008(a)(3), sec. 4004(a), Pub. L. 94-580; 90 Stat. 2803 and 2815; (42 U.S.C. 6907(a)(3) 6944); sec. 405(d), Pub. L. 95-217.

§ 257.1 Scope and purpose.

(a) These Criteria are for use in determining which solid waste disposal facilities pose no reasonable probability of adverse effects on health or the environment. Facilities failing to meet these Criteria will be considered open dumps for the purposes of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (the Act). Sections 4005(c) and 4003 of the Act prohibit open dumping, and require that such facilities must be closed or upgraded, except for facilities operating on a State-established compliance schedule which specifies an enforceable sequence of actions or operations.

(b) These Criteria also provide guidelines for sludge utilization and disposal, under section 405(d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (Pub. L. 95-217). The owner or operator of any publicly owned treatment works must comply with the Criteria in accordance with section 405(e) of that Act.

(c) These Criteria apply to all *solid waste disposal facilities* as these terms are defined in the Act, with the following exceptions: (1) Facilities for the disposal of hazardous waste must comply with the regulations promulgated under Subtitle C of the Act; (2) regulations for the State Underground Injection Control Program (40 CFR Part 146) developed under authority of the Safe Drinking Water Act of 1974 (Pub. L. 93-523, 88 Stat. 1660 et. seq., 42 U.S.C. 300 et. seq.) will apply to undergound well injection in lieu of these Criteria; (3) agricultural wastes, including manures and crop residues, which are returned to the soil as fertilizers or soil conditioners are not subject to classification by these Criteria; and (4) overburden resulting from mining operations, including mining and milling waste, which is returned to the mine is not subject to classification by these Criteria.

§ 257.2 Definitions.

As used in these criteria:

(a) "Aquifer" means a geologic formation, group of formations, or part of a formation that is capable of yielding usable quantities of ground water to wells or springs.

(b) "Base flood" means a flood that has a 1 percent or greater chance of recurring in any year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period. In any given 100-year interval such a flood may not occur, or more than one such flood may occur.

(c) "Beneficial utilization" means the application of solid waste to land for the purpose of supplying nutrients or conditioning the soil.

(d) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by the pH 7.0 ammonium acetate procedure (Schollenberger, C.J. and Simon, R.H., "Determination of exchange capacity and exchangeable bases in soil-ammonium acetate method", SOIL SCIENCE, 59: 13-25, 1945).

(e) "Contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone (Pub. L. 92-500, 86 Stat. 886, 33 U.S.C. 1362).

(f) "Discharge of pollutants" means (1) any addition of any pollutant to navigable waters, (2) any addition of any pollutant to the waters of the contiguous zone or the ocean from any source other than a vessel or other floating craft.

(g) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters (Pub. L. 94-580, 90 Stat. 2799, 42 U.S.C. 6903).

(h) "Endangerment" means the introduction of any physical, chemical, biological, or radiological substance or matter into ground water in such a concentration that (1) makes it necessary for a ground-water user to increase treatment of the water (including treatment to meet any maximum contaminant level set forth in any promulgated National Primary Drinking Water Standard), (2) makes it necessary for a future user of the ground water to use more extensive treatment of the water than would otherwise have been necessary (based on current

technology), or (3) otherwise makes the water unfit for human consumption.

(i) "Facility" means any land and appurtenances thereto used for the disposal of solid wastes.

(j) "Facility structures" means any buildings and sheds, or utility or drainage lines on the facility.

(k) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the base flood.

(l) "Food chain crops" means tobacco; crops grown for human consumption; and pasture, forage, and feed grain for animals whose products are consumed by humans.

(m) "Ground water" means water below the land surface in the zone of saturation.

(n) "Leachate" means liquid containing dissolved or suspended materials that emerges from solid waste.

(o) "Navigable waters" means the waters of the United States, including the territorial seas (Pub. L. 92-500, 86 Stat. 886, 33 U.S.C. 1362).

(p) "Non-point source" means any origin from which pollutants emanate in an unconfined and unchannelled manner, including but not limited to surface runoff and leachate seeps.

(q) "Open burning" means the combustion of solid waste without (1) control of combustion air to maintain adequate temperature for efficient combustion, (2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, or (3) control of the emission of the combustion products.

(r) "Open dump" means a site for the disposal of solid waste which does not comply with these Criteria (Pub. L. 94-580, 90 Stat. 2800, 42 U.S.C. 6903).

(s) "Periodic application of cover material" means the application of soil or other suitable material over disposed solid waste at such frequencies and in such a manner as to impede vectors and infiltration of precipitation; reduce and contain odors, fires, and litter; and to enhance the facility's appearance and future utilization.

(t) "Permafrost" means permanently frozen subsoil.

(u) "Pesticide" means (1) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and (2) and substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant (Pub. L. 92-516, 86 Stat. 975, 7 U.S.C. 136).

(v) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged (Pub. L. 92-500, 86 Stat. 887, 33 U.S.C. 1362).

(w) "Pollutant" means any substance added to air, land, or water which impairs its chemical, physical, biological, or radiological quality.

(x) "Putrescible wastes" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds and potential disease vectors (such as rodents and flies).

(y) "Recharge zone" means an area through which water enters an aquifer.

(z) "Sanitary landfill" means a facility for the disposal of solid waste which meets these Criteria (Pub. L. 94-580, 90 Stat. 2800, 42 U.S.C. 6903).

(aa) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects (Pub. L. 94-580, 90 Stat. 2800, 42 U.S.C. 6903).

(bb) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activies, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923). (Pub. L. 94-580, 90 Stat. 2801, 42 U.S.C. 6903.)

(cc) "Stabilization" means any chemical, physical, thermal, or biological treatment process that results in the significant reduction of pathogenic organisms.

(dd) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. (Pub. L. 94-580, 90 Stat. 2801, 42 U.S.C. 6903.)

(ee) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil condition. Wetlands generally include swamps, marches, bogs, and similar areas. (33 CFR Part 323—Permits for Discharges of Dredged or Fill Material into Waters of the United States.)

§ 257.3 Criteria for classification of solid waste disposal facilities.

For the purposes of classification under Sections 4004(a) and 1008(a)(3) of the Act, a facility for the disposal of solid waste poses no reasonable probability of adverse effects on health, safety, or the environment if it is so located, designed, constructed, operated, completed, and maintained that it meets the following criteria.

§ 257.3-1 Environmentally sensitive areas.

(a) *Wetlands.* The facility shall not be located in a wetland unless:

(1) The facility obtains an NPDES permit under Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500, 86 Stat. 880, 33 U.S.C. 1342), and

(2) If a levee or other type of containment structure is to be placed in the water as part of the disposal activity, the facility obtains a permit issued under authority of Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500, 86 Stat. 884, 33 U.S.C. 1344) according to the Army Corps of Engineers Permits for Discharges of Dredged or Fill Material into Waters of the United States (33 CFR Part 323).

COMMENT.—There is a strong presumption against the issuance of an NPDES permit for the discharge of solid waste into wetland areas. Only upon a showing of extraordinary circumstances—including a demonstration of alternative methods of disposal, an assessment of environmental impact for each alternative, an assessment of the technical and economic feasibility of each alternative, and a justification for the wetlands disposal alternative in view of the environmental impact and feasibility—will an NPDES application be considered and an NPDES permit issued. Any NPDES permit issued for the discharge of solid waste into wetland areas must assure that the facility utilizes appropriate technologies and/or best management practices to minimize any adverse effects.

(b) *Floodplains.* The facility shall not be located in a floodplain unless it is clearly demonstrated that:

(1) The facility will not restrict the flow of the base flood or reduce the temporary water-storage capacity of the floodplain such that increased flooding upsteam or downstream may result from the base flood, and

(2) The facility is designed, constructed, operated, and maintained so as to protect against inundation by the base flood, unless the facility is for land application of solid waste for beneficial utilization as agricultural soil conditioners or fertilizers.

(c) *Permafrost areas.* The facility shall not be located in permafrost areas unless:

(1) Other alternatives such as recycling or salvaging of materials, incineration and energy recovery of combustibles, deep well injection, and transport of the wastes back to more temperate regions are evaluated and determined to be technologically or economically infeasible, and

(2) The facility is sited on relatively dry and workable soils where minimal or no vegetative cover exists, and the facility is designed, constructed, and operated so as to minimze erosion and to minimize surface area consumed, and

(3) Regional disposal facilities are developed to the maximum extent feasible (including technological and economic considerations).

(d) *Critical habitats.* The facility shall not be located in critical habitat areas listed in 50 CFR Part 17, Subpart F: Critical Habitat, 1760 et seq., unless: It is demonstrated that such disposal operation will not jeopardize the continued existence of endangered species, and approval of the disposal plan is obtained from the Office of Endangered Species, Fish and Wildlife Service, Department of Interior.

(e) *Sole source aquifers.* The facility shall not be located in the recharge zone of an aquifer which is the sole or principal source of drinking water for an area designated under Section 1424(e) of the Safe Drinking Water Act of 1974 (Pub. L. 93-523 88 Stat. 1661, 1678, 42 U.S.C. 300f, 300h-3(e)) unless:

(1) Other alternative sites and waste disposal methods have been evaluated and determined to be technologically or economically infeasible.

(2) It is located, designed, constructed, operated, maintained, and monitored to prevent endangerment of the aquifer.

NOTE.—Comments are specifically solicited on the completeness, adequacy, and impact of the environmentally Sensitive Areas criteria.

§ 257.3-2 Surface water.

The facility does not adversely affect surface water quality and complies with the following:

(a) Point source discharge of pollutants, including channelled surface leachate, leachate seepage, surface runoff, and leachate treatment effluent, to off-site surface waters, complies with an NPDES permit issued for the facility according to Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500, 86 Stat. 880, 33 U.S.C. 1342).

(b) Non-point sources, including surface leachate, leachate seepage, and surface runoff are controlled so as to prevent or minimize non-point source discharges of pollutants into any off-site surface water.

§ 257.3-3 Ground Water.

The facility does not adversely affect ground water quality in accordance with Case I or Case II below.

(a) *Case I.* (1) For aquifers containing ground water which (i) is currently used or designated by the State for future use as a drinking water supply for human consumption, or (ii) contains less than 10,000 mg/l total dissolved solids and has not received designation pursuant to Case II; the quality of the ground water beyond the disposal facility property boundary is not endangered by the facility.

(2) For acquifers described in paragraph (a)(1) of this section the facility shall employ one of the following two operational means to assure that endangerment of the ground water quality is prevented:

(i) Any leachate produced shall be collected through use of artificial liners. Collected leachate shall be removed, recirculated, or treated as appropriate.

(ii) The facility shall control the migration of leachate by utilizing the site's natural hydrogeologic conditions, soil attenuation mechanisms and/or recovery and treatment of contaminated water. Where appropriate, infiltration of water into the solid waste shall be prevented or minimized so as to reduce leachate generation.

(3) For as long as leachate may enter ground water in such quantities and concentrations that the ground water quality may be endangered, monitoring of ground water, prediction of leachate migration, and a current and acceptable contingency plan for corrective action are required.

(b) *Case II.* (1) For ground water which is currently used or designated by the State for use other than as a drinking water supply for human consumption, the quality of the ground water beyond the disposal facility property boundary is maintained at such quality as specified by the State. ()

(2) A State may designate a groundwater source for use other than as a drinking water supply for human consumption if:

(i) The source is impractical for use as a drinking water supply due to the extent of its contamination, its depth, or the potential yield of the aquifer; or, after public hearings, it is determined that adequate alternative drinking water supplies are available for all users in the affected area into the foreseeable future, taking into account projected population growth, the extent, location, and nature of existing sources of drinking water, and other potential sources of ground water pollution, and

(ii) The waters of an adjacent State or country will not be endangered and adequate hydrogeologic conditions exist separating the ground water to be designated from waters to be protected so that protected waters are not endangered.

§ 257.3-4 Air.

The facility controls air emissions (including emissions by evaporation, sublimation, and oxidation) so as to comply with all applicable Federal, State, and local air regulations and to protect public health and welfare, and complies with the following prohibitions:

(a) Open burning of residential, commercial, institutional, and industrial solid waste is prohibited.

(b) Open burning of other solid waste (e.g. agricultural and silvicultural) is prohibited unless in compliance with State and local regulations.

§ 257.3-5 Application to land used for the production of food chain crops.

A facility for the beneficial utilization of solid waste by application to land used for the production of food chain crops complies with the following in addition to the other criteria contained in this regulation.

(a) *Cadmium.* Any site that is currently or will in the future be used for the production of food chain crops complies with either subparagraph (1) or subparagraph (2) of this paragraph.

(1) (i) The annual application of cadmium from solid waste does not exceed the maximum additions below.

Years*	Maximum annual Cd addition* (kg/ha)
Present to Dec. 31, 1981	2.0
Jan. 1, 1982 to Dec. 31, 1985	1.25
Beginning Jan. 1, 1986	0.5

*NOTE.—Comments are requested on the public health and environmental implications of this phased approach. Comments are also requested on the ability of locally implemented industrial waste pretreatment programs to reduce solid waste cadmium concentrations to levels which will permit continued land application on food chain crops within the schedule shown.

(ii) The maximum cumulative amount of cadmium applied to any hectare of land does not exceed: 5 kilograms on soils with a Cation Exchange Capacity (CEC) of less than 5, 10 kilograms on soils whose CEC is between 5 and 15, and 20 kilograms on soils whose CEC exceeds 15.

(iii) Solid waste containing cadmium concentrations in excess of 25 mg/kg dry weight is not applied to sites where tobacco, leafy vegetables, or root crops are or will be grown for direct human consumption.

(iv) Solid waste containing cadmium is applied so that the pH of the solid waste and soil mixture is maintained at 6.5 or greater.

(2) The land application of solid waste containing cadmium is acceptable is the resulting level of cadmium in the crops and meats marketed for human consumption are analyzed prior to marketing and shown to be

comparable to those levels present in similar crops or meats produced locally where solid waste has not been applied. A contingency plan is necessary which identifies alternative courses of action which may be taken if crop cadmium levels are not found to be comparable (e.g., restrictions on crop marketing, future land use, and sludge application rates). The contingency plan must also provide adequate safeguards to preclude risks from alternative land uses following the closure of the disposal site. This alternative is only available to those facilities which demonstrate that they possess the necessary resources and expertise to adequately manage and monitor their operations.

(b) *Pathogens.* (1) If solid waste of concern due to its pathogen content is applied directly to the surface of the land it is stabilized to reduce public health hazards.

(2) Land which has received solid waste of concern due to its pathogen content is not used for the production of human food crops which are normally eaten raw (except crops such as orchard fruits, where there is no contact between the solid waste and the crop) for at least one year following application or longer.

(c) *Pesticides and persistent organics.* The application of solid waste containing pesticides on land that is currently or will in the future be used for the production of food chain crops does not result in pesticide residues in or on crops in excess of the tolerances set pursuant to Section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA; 21 U.S.C. 346a) and the regulations thereunder (40 CFR Part 180) and Section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA; 21 U.S.C. 348) and the regulations thereunder (21 CFR Part 561).The application of solid wastes containing persistent organics on land that is currently or will in the future be used for the production of food chain crops does not result in persistent organic levels in or on foods in excess of those established by FDA (21 CFR Part 109).

(d) *Direct ingestion.* Solid waste of concern due to its pathogen, toxic organic or heavy metal content (e.g., lead and PCB) is not applied to a site so that the freshly applied solid waste may be directly ingested by animals raised for milk or by humans.

§ 257.3–6 Disease vectors.

The facility protects public health by controlling disease vectors. This shall be accomplished through minimizing the availability of food and harborage for vectors through the periodic application of cover material or other techniques where appropriate.

§ 257.3-7 Safety.

The facility does not pose a safety hazard to facility employees and users and to the public in accordance with the following:

(a) *Explosive gases.* The concentrations of explosive gases in facility structures (excluding gas control or recovery system components), or in the soil at the facility property boundary do not reach the lower explosive limits for the gases.

(b) *Toxic or asphyxiating gases.* Toxic or asphyxiating gases are not allowed to migrate off site, or accumulate in facility structures (excluding gas control or recovery components) in concentrations harmful to human, animal, or plant life.

(c) *Fires.* All fires are extinguished expeditiously; and fire hazards are minimized through proper site construction and design, and the periodic application of cover material where appropriate.

(d) *Bird hazards to aircraft.* Disposal facilities which receive putrescible wastes that may attract birds are not located (1) within 3,048 meters of any runway used or planned to be used by turbojet aircraft, or (2) within 1,524 meters of any runway used or planned to be used only by piston-type aircraft, unless it is determined that the disposal facility does not pose a bird hazard to aircraft. Determinations shall be made on a case-by-case basis for those facilities which are not within the above distances but are within the conical surfaces described by Federal Aviation Regulations Part 77 as applied to an individual airport.

(e) *Access.* Entry to the facility is controlled so as to minimize exposure of the public to hazards of heavy equipment operation and exposed waste.

§ 257.4 Effective date.

These Criteria become effective 30 days after final publication.

[FR Doc. 78-3151 Filed 2-3-78, 8:45 am]

WILD AND SCENIC RIVERS ACT

PUBLIC LAW 90-542; 82 STAT. 906

An Act to provide for a National Wild and Scenic Rivers System and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

(a) This Act may be cited as the "Wild and Scenic Rivers Act".

(b) It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

(c) The purpose of this Act is to implement this policy by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which and standards according to which additional components may be added to the system from time to time.

Sec. 2

(a) The national wild and scenic rivers system shall comprise rivers (i) that are authorized for inclusion therein by Act of Congress, or (ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned, that are found by the Secretary of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this chapter and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system; including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade County; and that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line. Upon receipt of an application under clause (ii) of this subsection, the Secretary shall notify the Federal Energy Regulatory Commission and publish such application in the Federal Register. Each river designated under clause (ii) shall be administered by the State or political subdivision thereof without expense to the United States other than for administration and management of federally owned lands. For purposes of the preceding sentence, amounts made available to any State or political sub-division under the Land and Water Conservation Act of 1965 or any other provision of law shall not be treated as an expense to the United States. Nothing in this subsection shall be construed to provide for the transfer to, or administration by, a State or local authority of any federally owned lands which are within the boundaries of any river included within the system under clause (ii).

(b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1, subsection (b) of this Act. Every wild scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

(1) Wild river areas-Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas-Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(3) Recreational river areas-Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

Sec 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) Clearwater, Middle Fork, Idaho - The Middle Fork from the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork, upstream to the Powell Ranger Station; and the Selway River from Lowell upstream to its origin; to be administered by the Secretary of Agriculture.

(2) Eleven Point, Missouri - The segment of the river extending downstream from Thomasville to State Highway 142; to be administered by the Secretary of Agriculture.

(3) Feather, California - The entire Middle Fork downstream from the confluence of its tributary streams one kilometer south of Beckwourth, California; to be administered by the Secretary of Agriculture.

(4) Rio Grande, New Mexico - The segment extending from the Colorado State line downstream to the State Highway 96 crossing, and the lower four miles of the Red River; to be administered by the Secretary of the Interior.

(5) Rogue, Oregon - The segment of the river extending from the mouth of the Applegate River downstream to the Lobster Creek Bridge; to be administered by agencies of the Departments of the Interior or Agriculture as agreed upon by the Secretaries of said Departments or as directed by the President.

(6) Saint Croix, Minnesota and Wisconsin - The segment between the dam near Taylors Falls, Minnesota, and the dam near Gordon, Wisconsin, and its tributary, the Namekagon, from Lake Namekgon downstream to its confluence with the Saint Croix; to be administered by the Secretary of the Interior; Provided, That except as may be required in connection with items (a) and (b) of this paragraph, no funds available to carry out the provisions of this chapter may be expended for the acquisition or development of lands in connection with, or for administration under this chapter of, that portion of the Saint Croix River between the dam near Talyors Falls, Minnesota, and the upstream end of Big Island in Wisconsin, until sixty days after the date on which the Secretary has transmitted to the President of the Senate and Speaker of the House of Representatives a proposed cooperative agreement between the Northern States Power Company and the United States (a) whereby the company agrees to convey to the United States, without charge, appropriate interests in certain of its lands between the dam near Taylors Falls, Minne-

sota, and the upstream end of Big Island in Wisconsin, including the company's right, title, and interest to approximately one hundred acres per mile, and (b) providing for the use and development of other lands and interests in land retained by the company between said points adjacent to the river in a manner which shall complement and not be inconsistent with the purposes for which the lands and interests in land donated by the company are administered under this chapter. Said agreement may also include provision for State or local governmental participation as authorized under subsection (e) of section 10 of this title. A one-thousand-three-hundred-and-eighty-acre portion of the area commonly known as the Velle Estate, located adjacent to the Saint Croix River in Douglas County, Wisconsin, as depicted on the map entitled "Boundary Map/Velie Estate--Saint Croix National Scenic Riverway", dated September, 1980, and numbered 630-90,001, may be acquired by the Secretary without regard to any acreage limitation set forth in subsection (b) of this section or subsetion (a) or (b) of section 6 of this title.

(7) Salmon, Middle Fork, Idaho - From its origin to its confluence with the main Salmon River; to be administered by the Secretary of Agriculture.

(8) Wolf, Wisconsin - From the Langlade-Menominee County line downstream to Keshena Falls; to be administered by the Secretary of the Interior.

(9) Lower Saint Croix, Minnesota and Wisconsin- The segment between the dam near Taylors Falls and its confluence with the Mississippi River: Provided, (i) That the upper twenty-seven miles of this river segment shall be administered by the Secretary of the Interior; and (ii) That the lower twenty-five miles shall be designated by the Secretary upon his approval of an application for such designation made by the Governors of the States of Minnesota and Wisconsin.

(10) Chattooga, North Carolina, South Carolina, Georgia - The Segment from 0.8 mile below Cashiers Lake in North Carolina to Tugaloo Reservoir, and the West Fork Chattooga River from its junction with Chattooga upstream 7.3 miles, as generally depicted on the boundary map entitled "Proposed Wild and Scenic Chattooga River and Corridor Boundary", dated August 1973; to be administered by the Secretary of Agriculture: Provided, That the Secretary of Agriculture shall take such action as is provided for under subsection (b) of this section within one year from May 10, 1974: Provided further, That for the purposes of this river, there are authorized to be appropriated not more than $5,200,000 for the acquisition of lands and interests in lands and not more than $809,000 for development.

(11) Rapid River, Idaho - The segment from the headwaters of the main stem to the national forest boundary and the segment of the West Fork from the wilderness boundary downstream to the confluence with the main stem, as a wild river.

(12) Snake, Idaho and Oregon - The segment from Hells Canyon Dam downstream to Pittsburgh Landing, as a wild river; and the segment from Pittsburgh Landing downstream to an eastward extension of the north boundary of section 1, township 5 north, range 47 east, Willamette meridian, as a scenic river.

(13) Flathead, Montana - The North Fork from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from it headwaters to its confluence to the South Fork; and the South Fork from its origin to the Hungry Horse Reservoir, as generally depicted on the map entitled "Proposed Flathead Wild and Scenic River Boundary Location" dated February 1976; to be administered by agencies of the Departments of the Interior and Agriculture as agreed upon by the Secretaries of such Departments or as directed by the President. Action required to be taken under subsection (b) of this section shall be taken within one year from October 12, 1976. For the purposes of this river, there are authorized to be appropriated not more than $6,719,000 for the acquisition of lands and interests in lands. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(14) Missouri, Montana - The segment from Fort Benton one hundred and forty-nine miles downstream to Robinson Bridge, as generally depicted on the boundary map entitled "Missouri Breaks Freeflowing River Proposal", dated October 1975, to be administered by the Secretary of the Interior. For the purposes of this river, there are authorized to be appropriated not more than $1,800,000 for the acquisition of lands and interests in lands. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(15) Obed, Tennessee - The segment from the western edge of the Catoosa Wildlife Management Area to the confluence with the Emory River; Clear Creek from the Morgan County line to the confluence with the Obed River, Daddys Creek from the Morgan County line to the confluence with the Obed River; and the Emory River from the confluence with the Obed River to the Nemo bridge as generally depicted and classified on the stream classification map dated December 1973. The Secretary of the Interior shall take such action, with the participation of the State of Tennessee as is provided for under subsection (b) of this section within one year following October 12, 1976. The development plan required by such subsection (b) shall include cooperative agreements between the State of Tennessee acting through the Wildlife Resources Agency and the Secretary of the Interior. Lands within the Wild and Scenic River boundaries that are currently part of the Catoosa Wildlife Management Area shall continue to be owned and managed by the Tennessee Wildlife Resources Agency in such a way as to protect the wildlife resources and primitive character of the area, and without further development of roads, campsites, or associated recreational facilities unless deemed necessary by that agency for wildlife management practices. The Obed Wild and Scenic River shall be managed by the Secretary of the Interior. For the purposes of carrying out the provisions of this chapter with respect to this river, there are authorized to be appropriated such sums as may be necessary, but not to exceed $2,000,000 for the acquisition of lands or interests in lands and not to exceed $400,000 for development. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(16) Pere Marquette, Michigan - The segment downstream from the junction of the Middle and Little South Branches to its junction with United States Highway 31 as generally depicted on the boundary map entitled "Proposed Boundary Location, Pere Marquette Wild and Scenic River,"; to be administered by the Secretary of Agriculture. After consultation with State and local governments and the interested public, the Secretary shall take such action as is provided for under subsection (b) of this section with respect to the segment referred to in this paragraph within one year from November 10, 1978. Any development or management plan prepared pursuant to subsection (b) of this section shall include (a) provisions for the dissemination of information to river users and (b) such regulations relating to the recreational and other uses of the river as may be necessary in order to protect the area comprising such river (including lands contiguous or adjacent thereto) from damage or destruction by reason of overuse and to protect its scenic, historic, esthetic and scientific values. Such regulations shall further contain procedures and means which shall be utilized in the enforcement of such development and management plan. For the purposes of carrying out the provisions of this chapter with respect to the river designated by this paragraph, there are authorized to be appropriated not more than $8,125,000 for the acquisition of lands or inter-

ests in lands and $402,000 for development.

(17) Rio Grande, Texas - The segment on the United States side of the river from river mile 842.3 above Mariscal Canyon downstream to river mile 651.1 at the Terrell-Val Verde County line; to be administered by the Secretary of the Interior. The Secretary shall, within two years after November 10, 1978, take such action with respect to the segment referred to in this paragraph as is provided for under subsection (b) of this section. The action required by such subsection (b) shall be undertaken by the Secretary, after consultation with the United States Commissioner, International Boundary and Water Commission, United States and Mexico, and appropriate officials of the State of Texas and its political subdivisions. The development plan required by subsection (b) of this section shall be construed to be a general management plan only for the United States side of the river and such plan shall include, but not be limited to, the establishment of a detailed boundary which shall include an average of not more than 160 acres per mile. Nothing in this chapter shall be construed to be in conflict with—

(A) the commitments or agreements of the United States made by or in pursuance of the treaty between the United States and Mexico regarding the utilization of the Colorado and Tijuana Rivers and of the Rio Grande, signed at Washington, February 1944 (59 Stat. 1219), or

(B) the treaty between the United States and Mexico regarding maintenance of the Rio Grande and Colorado River as the International boundary between the United States and Mexico, signed November 23, 1970.

For purposes of carrying out the provisions of this chapter with respect to the river designated by this paragraph, there are authorized to be appropriated such sums as may be necessary, but not more than $1,650,000 for the acquisition of lands and interests in lands and not more than $1,800,000 for development.

(18) Skagit, Washington - The segment from the pipeline crossing at Sedro-Woolley upstream to and including the mouth of Bacon Creek; the Cascade River from its mouth to the junction of its North and South Forks; the South Fork to the boundary of the Glacier Peak Wilderness Area; the Suiattle River from its mouth to the boundary of the Glacier Peak Wilderness Area at Milk Creek; the Sauk River from its mouth to its junction with Elliott Creek; the North Fork of the Sauk River from its junction with the South Fork of the Sauk to the boundary of the Glacier Peak Wilderness Area; as generally depicted on the boundary map entitled "Skagit River—River Area Boundary"; all segments to be administered by the Secretary of Agriculture. Riprapping related to natural channels with natural rock along the shorelines of the Skagit segment to preserve and protect agricultural land shall not be considered inconsistent with the values for which such segment is designated. After consultation with affected Federal agencies, State and local government and the interested public, the Secretary shall take such action as is provided for under subsection (b) of this section with respect to the segments referred to in this paragraph within one year from November 10, 1978; as part of such action, the Secretary of Agriculture shall investigate that portion of the North Fork of the Cascade River from its confluence with the South Fork to the boundary of the North Cascades National Park and if such portion is found to qualify for inclusion, it shall be treated as a component of the Wild and Scenic Rivers System designated under this section upon publication by the Secretary of notification to that effect in the Federal Register. For the purposes of carrying out the provisions of this chapter with respect to the river designated by this paragraph there are authorized to be appropriated not more than $11,734,000 for the acquisition of lands or interest in lands and not more than $332,000 for development.

(19) Upper Delaware River, New York and Pennsylvania - The segment of the Upper Delaware River from the confluence of the East and West branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York, as depicted on the boundary map entitled "The Upper Delaware Scenic and Recreational River", dated April 1978; to be administered by the Secretary of the Interior. Subsection (b) of this section shall not apply, and the boundaries and classifications of the river shall be as specified on the map referred to in the preceding sentence, except to the extent that such boundaries or classifications are modified pursuant to section 704 (c) of the National Parks and Recreation Act of 1978. Such boundaries and classifications shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. For purposes of carrying out the provisions of this chapter with respect to the river designated by this paragraph there are authorized to be appropriated such sums as may be necessary.

(20) Delaware, New York, Pennsylvania, and New Jersey - The segment from the point where the river crosses the northern boundary of the Delaware Water Gap National Recreation Area to the point where the river crosses the southern boundary of such recreation area; to be administered by the Secretary of the Interior. For purposes of carrying out this chapter with respect to the river designated by this paragraph, there are authorized to be appropriated such sums as may be necessary. Action required to be taken under subsection (b) of this section with respect to such segment shall be taken within one year from November 10, 1978, except that, with respect to such segment, in lieu of the boundaries provided for in such subsection (b), the boundaries shall be the banks of the river. Any visitors facilities established for purposes of use and enjoyment of the river under the authority of the Act establishing the Delaware Water Gap National Recreation Area shall be compatible with the purposes of this chapter and shall be located at an appropriate distance from the river.

(21) American, California - The North Fork from a point 0.3 mile above Heath Springs downstream to a point approximately 1,000 feet upstream of the Colfax-Iowa Hill Bridge, including the Gold Run Addition Area, as generally depicted on the map entitled "Proposed Boundary Maps" contained in Appendix I of the document dated January 1978 and entitled "A Proposal: North Fork American Wild and Scenic River" published by the United States Forest Service, Department of Agriculture; to be designated as a wild river and to be administered by agencies of the Departments of Interior and Agriculture as agreed upon by the Secretaries of such Departments or as directed by the President. Action required to be taken under subsection (b) of this section shall be taken within one year after November 10, 1978; in applying such subsection (b) in the case of the Gold Run Addition Area, the acreage limitation specified therein shall not apply and in applying section 6(g)(3) of this title, January 1, 1977, shall be substituted for January 1, 1967. For purposes of carrying out the provisions of this chapter with respect to the river designated by this paragraph, there are authorized to be appropriated not more than $850,000 for the acquisition of lands and interests in land and not more than $765,000 for development.

(22) Missouri River, Nebraska, South Dakota - The segment from Gavins Point Dam, South Dakota, fifty-nine miles downstream to Ponca State Park, Nebraska, as generally depicted in the document entitled "Review Report for Water Resources Development, South Dakota, Nebraska, North Dakota, Montana", prepared by the Division Engineer, Missouri River Division, Corps of Engineers, dated August 1977 (hereinafter in this paragraph referred to as the "August 1977 Report"). Such segment shall be

administered as a recreational river by the Secretary. The Secretary shall enter into a written cooperative agreement with the Secretary of the Army (acting through the Chief of Engineers) for construction and maintenance of bank stabilization work and appropriate recreational development. After public notice and consultation with the State and local governments, other interested organizations and associations, and the interested public, the Secretary shall take such action as is required pursuant to subsection (b) of this section within one year from November 10, 1978. In administering such river, the Secretary shall, to the extent, and in a manner, consistent with this section—

(A) provide (i) for the construction by the United States of such recreation river features and streambank stabilization structures as the Secretary of the Army (acting through the Chief of Engineers) deems necessary and advisable in connection with the segment designated by this paragraph, and (ii) for the operation and maintenance of all streambank stabilization structures constructed in connection with such segment (including both structures constructed before November 10, 1978, and structures constructed after such date, and including both structures constructed under the authority of this section and structures constructed under the authority of any other Act); and

(B) permit access for such pumping and associated pipelines as may be necessary to assure an adequate supply of water for owners of land adjacent to such segment and for fish, wildlife, and recreational uses outside the river corridor established pursuant to this paragraph.

The streambank structures to be constructed and maintained under subparagraph (A) shall include, but not be limited to, structures at such sites as are specified with respect to such segment on pages 62 and 63 of the August 1977 Report, except that sites for such structures may be relocated to the extent deemed necessary by the Secretary of the Army (acting through the Chief of Engineers) by reason of physical changes in the river or river area. The Secretary of the Army (acting through the Chief of Engineers) shall condition the construction or maintenance of any streambank stabilization structure or of any recreational river feature at any site under subparagraph (A)(i) upon the availability to the United States of such land and interests in land in such ownership as he deems necessary to carry out such construction or maintenance and to protect and enhance the river in accordance with the purposes of this chapter. Administration of the river segment designated by this paragraph shall be in coordination with, and pursuant to the advice of a Recreational River Advisory Group which shall be established by the Secretary. Such Group may include in its membership, representatives of the affected States and political subdivisions thereof, affected Federal agencies, and such organized private groups as the Secretary deems desirable. Notwithstanding the authority to the contrary contained in section 6(a) of this title, no land or interests in land may be acquired without the consent of the owner: Provided, That not to exceed 5 per centum of the acreage within the designated river boundaries may be acquired in less than fee title without the consent of the owner, in such instance of the Secretary's determination that activities are occurring, or threatening to occur thereon which constitute serious damage or threat to the integrity of the river corridor, in accordance with the values for which this river was designated. For purposes of carrying out the provisions of this chapter with respect to the river designated by this paragraph, there are authorized to be appropriated not to exceed $21,000,000, for acquisition of lands and interests in lands and for development.

(23) Saint Joe, Idaho - The segment above the confluence of the North Fork of the Saint Joe River to Spruce Tree Campground, as a recreational river; the segment above Spruce Tree Campground to Saint Joe Lake, as a wild river, as generally depicted on the map entitled "Saint Joe River Corridor Map" on file with the Chief of the Forest Service and dated September 1978; to be administered by the Secretary of Agriculture. Notwithstanding any other provision of law, the classification of the Saint Joe River under this paragraph and the subsequent development plan for the river prepared by the Secretary of Agriculture shall at no time interfere with or restrict the maintenance, use, or access to existing or future roads within the adjacent lands nor interfere with or restrict present use of or future construction of bridges across that portion of the Saint Joe designated as a "recreational river" under this paragraph. Dredge or placer mining shall be prohibited within the banks or beds of the main stem of the Saint Joe and its tributary streams in their entirety above the confluence of the main stem with the North Fork of the river. Nothing in this chapter shall be deemed to prohibit the removal of sand and gravel above the high water mark of the Saint Joe River and its tributaries within the river corridor by or under the authority of any public body or its agents for the purposes of construction or maintenance of roads. The Secretary shall take such action as is required under subsection (b) of this section within one year from November 10, 1978. For the purposes of this river, there are authorized to be appropriated not more than $1,000,000 for the acquisition of lands or interest in lands.

(24) Salmon, Idaho - (A) The segment of the main river from the mouth of the North Fork of the Salmon River downstream to Long Tom Bar in the following classes:

(i) the forty-six-mile segment from the mouth of the North Fork of the Salmon River to Corn Creek as a recreational river; and

(ii) the seventy-nine-mile segment from Corn Creek to Long Tom Bar as a wild river; all as generally depicted on a map entitled "Salmon River" dated November 1979, which is on file and available for public inspection in the Office of the Chief, Forest Service, United States Department of Agriculture.

(B) This segment shall be administered by the Secretary of Agriculture: Provided, That after consultation with State and local governments and the interested public, the Secretary shall take such action as is required by subsection (b) of this section within one year from July 23, 1980.

(C) The use of motorboats (including motorized jetboats) within this segment of the Salmon River shall be permitted to continue at a level not less than the level of use which occurred during calendar year 1978.

(D) Subject to existing rights of the State of Idaho, including the right of access, with respect to the beds of navigable streams, tributaries or rivers, dredge and placer mining in any form including any use of machinery for the removal of sand and gravel for mining purposes shall be prohibited within the segment of the Salmon River designated as a component of the Wild and Scenic Rivers System by this paragraph; within the fifty-three-mile segment of the Salmon River from Hammer Creek downstream to the confluence of the Snake River; and within the Middle Fork of the Salmon River; and its tributary streams in their entirety: Provided, That nothing in this paragraph shall be deemed to prohibit the removal of sand and gravel, outside the boundaries of the River of No Return Wilderness or the Gospel-Hump Wilderness, above the high water mark of the Salmon River or the Middle Fork and its tributaries for the purposes of construction or maintenance of public roads: Provided further, That this paragraph shall not apply to any written mineral leases approved by the Board of Land Commissioners of the State of Idaho prior to January 1, 1980.

(E) The provisions of section 7(a) of this title with respect to the licensing of dams, water conduits, reservoirs, powerhouses, transmission lines or other project works, shall apply to the fi[illegible]

three-mile segment of the Salmon River from Hammer Creek downstream to the confluence of the Snake River.

(F) For the purposes of the segment of the Salmon River designated as a component of the Wild and Scenic Rivers System by this paragraph, there is hereby authorized to be appropriated from the Land and Water Conservation Fund, after October 1, 1980, not more than $6,200,000 for the acquisition of lands and interests in lands.

(25) Alagnak, Alaska - That segment of the main stem and the major tributary to the Alagnak, the Nonvlanuk River, with Katmai National Preserve; to be administered by the Secretary of the Interior.

(26) Alatna, Alaska - The main stem within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

(27) Aniakchak, Alaska - That portion of the river, including its major tributaries, Hidden Creek, Mystery Creek, Albert Johnson Creek, and North Fork Aniakchak River, within the Aniakchak National Monument and National Preserve; to be administered by the Secretary of the Interior.

(28) Charley, Alaska - The entire river, including its major tributaries, Copper Creek, Bonanza Creek, Hosford Creek, Derwent Creek, Flat-Orthmer Creek, Crescent Creek, and Moraine Creek, within the Yukon-Charley Rivers National Preserve; to be administered by the Secretary of the Interior.

(29) Chilikadrotna, Alaska - That portion of the river within the Lake Clark National Park and Preserve; to be administered by the Secretary of the Interior.

(30) John, Alaska - That portion of the river within the Gates of Arctic National Park; to be administered by the Secretary of the Interior.

(31) Kobuk, Alaska - That portion within the Gates of the Arctic National Park and Preserve; to be administered by the Secretary of the Interior.

(32) Mulchatna, Alaska - That portion within the Lake Clark National Park and Preserve; to be administered by the Secretary of the Interior.

(33) Nontak, Alaska - The river from its source in the Gages of the Arctic National Park to its confluence with the Kelly River in the Noatak National Preserve; to be administered by the Secretary of the Interior.

(34) North Fork of the Koyukuk, Alaska - That portion within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

(35) Salmon, Alaska - That portion within the Kobuk Valley National Park; to be administered by the Secretary of the Interior.

(36) Tinaryguk, Alaska - That portion within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

(37) Tlikakila, Alaska - That portion within the Lake Clark National Park; to be administered by the Secretary of the Interior.

(38) Andreafsky, Alaska - That portion from its source, including all headwaters, and the East Fork, within the boundary of the Yukon Delta National Wildlife Refuge; to be administered by the Secretary of the Interior.

(39) Ivishak, Alaska - That portion from its source, including all headwaters and an unnamed tributary from Porcupine Lake within the boundary of the Arctic National Wildlife Range; to be administered by the Secretary of the Interior.

(40) Nowitna, Alaska - That portion from the point where the river crosses the west limit of township 18 south, range 22 east, Kateel River meridian; to its confluence with the Yukon River within the boundaries of the Nowitna National Wildlife Refuge; to be administered by the Secretary of the Interior.

(41) Sclawik, Alaska - That portion from a fork of the headwaters in township 12 north, range 10 east, Kateel River meridian to the confluence of the Kugarak River; within the Selawik National Wildlife Refuge to be administered by the Secretary of the Interior.

(42) Sheenjek, Alaska - The segment within the Arctic National Wildlife Refuge; to be administered by the Secretary of the Interior.

(43) Wind, Alaska - That portion from its source, including all headwaters and one unnamed tributary in township 13 south, within the boundaries of the Arctic National Wildlife Refuge; to be administered by the Secretary of the Interior.

(44) Alagnak, Alaska - Those segments or portions of the main stem and Nonvlanuk tributary lying outside and westward of the Katmai National Park/Preserve and running to the west boundary of township 13 south, range 43 west; to be administered by the Secretary of the Interior.

(45) Beaver Creek, Alaska - Those segments of the main stem from the vicinity of the confluence of the Bear and Champion Creeks downstream to its exit from the northeast corner of township 12 north, range 6 east, Fairbanks meridian within the White Mountains National Recreation Area, and the Yukon Flats National Wildlife Refuge, to be administered by the Secretary of the Interior.

(46) Birch Creek, Alaska - The segment of the main stem from the south side of Steese Highway in township 7 north, range 10 east, Fairbanks meridian, downstream to the south side of the Steese Highway in township 10 north, range 16 east; to be administered by the Secretary of the Interior.

(47) Delta, Alaska, - The segment from and including all of the Tangle Lakes to a point one-half mile, north of Black Rapids; to be administered by the Secretary of the Interior.

(48) Fortymile, Alaska - The main stem within the State of Alaska; O'Brien Creek; South Fork; Napoleon Creek, Franklin Creek, Uhler Creek, Walker Fork downstream from the confluence of Liberty Creek; Wade Creek; Mosquito Fork downstream from the vicinity of Kechumstuk; West Fork Dennison Fork downstream from the confluence of Logging Cabin Creek; Dennison Fork downstream from the confluence of West Fork Dennison Fork; Logging Cabin Creek; North Fork; Hutchison Creek; Champion Creek; the Middle Fork downstream from the confluence of Joseph Creek; and Joseph Creek; to be administered by the Secretary of the Interior.

(49) Gulkana, Alaska - The main stem from the outlet of Paxson Lake in township 12 north, range 2 west, Copper River meridian to the confluence with Sourdough Creek; the south branch of the west fork from the outlet of an unnamed lake in sections 10 and 15, township 10 north, range 7 west; Copper River meridian to the confluence with the west fork; the north branch from the outlet of two unnamed lakes one in sections 24 and 25, the second in sections 9 and 10, township 11 north, range 8 west, Copper River meridian to the confluence with the west fork, the west fork from its confluence with the north and south branches downstream to its confluence with the main stem; the middle fork from the outlet of Dickey Lake in township 13 north, range 5 west, Copper River meridian to the confluence with the main stem; to be classified as a wild river area and to be administered by the Secretary of the Interior.

(50) Unalakleet, Alaska - The segment of the main stem from the headwaters in township 12 south, range 3 west, Kateel River meridian extending downstream approximately 65 miles to the western boundary of township 18 south, range 8 west; to be administered by the Secretary of the Interior.

(b) The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from October 2, 1968, (except where a different date is provided in subsection (a) of this section) establish detailed boundaries therefor (which boundaries shall include an average of not more than three hundred and twenty acres per mile on both sides of the river); determine which of the classes outlined in section 1273 (b) of this title best fit the river or its various segments; and prepare a plan for

necessary developments in connection with its administration in accordance with such classification. Said boundaries, classification, and development plans shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives.

Sec. 4

(a) The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and submit to the President reports on the suitability or nonsuitability for addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system. The President shall report to the Congress his recommendations and proposals with respect to the designation of each such river or section thereof under this chapter. Such studies shall be completed and such reports shall be made to the Congress with respect to all rivers named in section 5 (a)(1) through (27) of this title no later than October 2, 1978. In conducting these studies the Secretary of the Interior and the Secretary of Agriculture shall give priority of those rivers (i) with respect to which there is the greatest likelihood of developments which, if undertaken, would render the rivers unsuitable for inclusion in the national wild and scenic rivers system, and (ii) which possess the greatest proportion of private lands within their areas. Every such study and plan shall be coordinated with any water resources planning involving the same river which is being conducted pursuant to the Water Resources Planning Act.

Each proposal shall be accompanied by a report, including maps and illustrations, showing among other things the area included within the proposal; the characteristics which make the area a worthy addition to the system; the current status of landownership and use in the area; the reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed, or curtailed if the area were included in the national wild and scenic rivers system; the Federal agency (which in the case of a river which is wholly or substantially within a national forest, shall be the Department of Agriculture) by which it is proposed the area be administered; the extent to which it is proposed that administration, including the costs thereof, be shared by State and local agencies; and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area as a component of the system. Each such report shall be printed as a Senate or House document.

(b) Before submitting any such report to the President and the Congress, copies of the proposed report shall, unless it was prepared jointly by the Secretary of the Interior and the Secretary of Agriculture, be submitted by the Secretary of the Interior to the Secretary of Agriculture or by the Secretary of Agriculture to the Secretary of the Interior, as the case may be, and to the Secretary of the Army, the Chairman of the Federal Power Commission, the head of any other affected Federal department or agency and, unless the lands proposed to be included in the area are already owned by the United States or have already been authorized for acquisition by Act of Congress, the Governor of the State or States in which they are located or an officer designated by the Governor to receive the same. Any recommendations or comments on the proposal which the said officials furnish the Secretary or Secretaries who prepared the report within ninety days of the date on which the report is submitted to them, together with the Secretary's or Secretaries' comments thereon, shall be included with the transmittal to the President and the Congress.

(c) Before approving or disapproving for inclusion in the national wild and scenic rivers system any river designated as a wild, scenic or recreational river by or pursuant to an act of a State legislature, the Secretary of the Interior shall submit the proposal to the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Federal Power Commission, and the head of any other affected Federal department or agency and shall evaluate and give due weight to any recommendations or comments which the said officials furnish him within ninety days of the date on which it is submitted to them. If he approves the proposed inclusion, he shall publish notice thereof in the Federal Register.

Sec. 5 (a) The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

(1) Allegheny, Pennsylvania: The segment from its mouth to the town of East Brady, Pennsylvania.

(2) Bruneau, Idaho: The entire main stem.

(3) Buffalo, Tennessee: The entire river.

(4) Chattooga, North Carolina, South Carolina, and Georgia: The entire river.

(5) Clarion, Pennsylvania: The segment between Ridgway and its confluence with the Allegheny River.

(6) Delaware, Pennsylvania and New York: The segment from Hancock, New York, to Matamoras, Pennsylvania.

(7) Flathead, Montana: The North Fork from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence with the South Fork; and the South Fork from its origin to Hungry Horse Reservoir.

(8) Gasconade, Missouri: The entire river.

(9) Illinois, Oregon: The entire river.

(10) Little Beaver, Ohio: The segment of the North and Middle Forks of the Little Beaver River in Columbiana County from a point in the vicinity of Negly and Elkton, Ohio, downstream to a point in the vicinity of East Liverpool, Ohio.

(11) Little Miami, Ohio: That segment of the main stem of the river, exclusive of its tributaries, from a point at the Warren-Clermont Cou Line at Loveland, Ohio, upstream to the sources of Little Miami including North Fork.

(12) Maumee, Ohio and Indiana: The main stem from Perrysburg, Ohio, to Fort Wayne, Indiana, exclusive of its tributaries in Ohio and inclusive of its tributaries in Indiana.

(13) Missouri, Montana: The segment between Fort Benton and Ryan Island.

(14) Moyie, Idaho: The segment from the Canadian border to its confluence with the Kootenai River.

(15) Obed, Tennessee: The entire river and its tributaries, Clear Creek and Daddys Creek.

(16) Penobscot, Maine: Its east and west branches.

(17) Pere Marquette, Michigan: The entire river.

(18) Pine Creek, Pennsylvania: The segment from Ansonia to Waterville.

(19) Priest, Idaho: The entire main stem.

(20) Rio Grande, Texas: The portion of the river between the west boundary of Hudspeth County and the east boundary of Terrell County on the United States side of the river: Provided, That before undertaking any study of this potential scenic river, the Secretary of the Interior shall determine, through the channels of appropriate executive agencies, that Mexico has no objection to its being included among the studies authorized by this Act.

(21) Saint Croix, Minnesota and Wisconsin: The segment between the dam near Taylors Falls and its confluence with the Mississippi River.

(22) Saint Joe, Idaho: The entire main stem.

(23) Salmon, Idaho: The segment from the town of North Fork to its confluence with the Snake River.

(24) Skagit, Washington: The segment from t town of Mount Vernon to and including the mout Bacon Creek; the Cascade River between its mout and the junction of its North and South Forks; the

South Fork to the boundary of the Glacier Peak Wilderness Area; the Suiattle River from its mouth to the Glacier Peak Wilderness Area boundary at Mill Creek; the Sauk River from its mouth to its junction with Elliott Creek; the North Fork of the Sauk River from its junction with the South Fork of the Sauk to the Glacier Peak Wilderness Area boundary.

(25) Suwannee, Georgia and Florida: The entire river from its source in the Okefenokee Swamp in Georgia to the gulf and the outlying Ichetucknee Springs, Florida.

(26) Upper Iowa, Iowa: The entire river.

(27) Youghiogheny, Maryland and Pennsylvania: The segment from Oakland, Maryland, to the Youghiogheny Reservoir, and from the Youghiogheny Dam downstream to the town of Connellsville, Pennsylvania.

(28) American, California: The North Fork from the Cedars to the Auburn Reservoir.

(29) Au Sable, Michigan: The segment downstream from Foot Dam to Oscoda and upstream from Loud Reservoir to its source, including its principal tributaries and excluding Mio and Bamfield Reservoirs.

(30) Big Thompson, Colorado: The segment from its source to the boundary of Rocky Mountain National Park.

(31) Cache la Poudre, Colorado: Both forks from their sources to their confluence, thence the Cache la Poudre to the eastern boundary of Roosevelt National Forest.

(32) Cahaba, Alabama: The segment from its junction with United States Highway 31 south of Birmingham downstream to its junction with United States Highway 80 west of Selma.

(33) Clark's Fork, Wyoming: The segment from the Clark's Fork Canyon to the Crandall Creek Bridge.

(34) Colorado, Colorado and Utah: The segment from its confluence with the Dolores River, Utah, upstream to a point 19.5 miles from the Utah-Colorado border in Colorado.

(35) Conejos, Colorado: The three forks from their sources to their confluence, thence the Conejos to its first junction with State Highway 17, excluding Platoro Reservoir.

(36) Elk, Colorado: The segment from its source to Clark.

(37) Encampment, Colorado: The Main Fork and West Fork to their confluence, thence the Encampment to the Colorado-Wyoming border, including the tributaries and headwaters.

(38) Green, Colorado: The entire segment within the State of Colorado.

(39) Gunnison, Colorado: The segment from the upstream (southern) boundary of the Black Canyon of the Gunnison National Monument to its confluence with the North Fork.

(40) Illinois, Oklahoma: The segment from Tenkiller Ferry Reservoir upstream to the Arkansas-Oklahoma border, including the Flint and Barren Fork Creeks.

(41) John Day, Oregon: The main stem from Service Creek Bridge (at river mile 157) downstream to Tumwater Falls (at river mile 10).

(42) Kettle, Minnesota: The entire segment within the State of Minnesota.

(43) Los Pinos, Colorado: The segment from its source, including the tributaries and headwaters within the San Juan Primitive Area, to the northern boundary of the Granite Peak Ranch.

(44) Manistee, Michigan: The entire river from its source to Manistee Lake, including its principal tributaries and excluding Tippy and Hodenpyl Reservoirs.

(45) Nolichuckey, Tennessee and North Carolina: The entire main stem.

(46) Owyhee, South Fork, Oregon: The main stem from the Oregon-Idaho border downstream to the Owyhee Reservoir.

(47) Piedra, Colorado: The Middle Fork and East Fork from their sources to their confluence, thence the Piedra to its junction with Colorado Highway 160.

(48) Shepaug, Connecticut: The entire river.

(49) Sipsey Fork West Fork, Alabama: The segment, including its tributaries, from the impoundment formed by the Lewis M. Smith Dam upstream to its source in the William B. Bankhead National Forest.

(50) Snake, Wyoming: The segment from the southern boundaries of Teton National Park to the entrance to Palisades Reservoir.

(51) Sweetwater, Wyoming: The segment from Wilson Bar downstream to Spring Creek.

(52) Tuolumne, California: The main river from its source on Mount Dana and Mount Lyell in Yosemite National Park to Don Pedro Reservoir.

(53) Upper Mississippi, Minnesota: The segment from its source at the outlet of Itasca Lake to its junction with the northwestern boundary of the city of Anoka.

(54) Wisconsin, Wisconsin: The segment from Prairie du Sac to its confluence with the Mississippi River at Prairie du Chien.

(55) Yampa, Colorado: The segment within the boundaries of the Dinosaur National Monument.

(56) Dolores, Colorado: The segment of the main stem from Rico upstream to its source, including its headwaters; the West Dolores from its source, including its headwaters, downstream to its confluence with the main stem; and the segment from the west boundary, section 2,township 38 north, range 16 west, NMPM, below the proposed McPhee Dam, downstream to the Colorado-Utah border, excluding the segment from one mile above Highway 90 to the confluence of the San Miguel River.

(57) Snake, Washington, Oregon, and Idaho: the segment from an eastward extension of the north boundary of section 1, township 5 north, range 47 east, Williamette meridian, downstream to the town of Asotin, Washington.

(58) Housatonic, Connecticut: The segment from the Massachusetts-Connecticut boundary downstream to its confluence with the Shepaug River.

(59) Kern, California - The main stem of the North Fork from its source to Isabella Reservoir excluding its tributaries.

(60) Loxahatchee, Florida - The entire river including its tributary, North Fork.

(61) Ogeechee, Georgia - The entire river.

(62) Salt, Arizona - The main stem from a point on the north side of the river intersected by the Fort Apache Indian Reservation boundary (north of Buck Mountain) downstream to Arizona State Highway 288.

(63) Verde, Arizona - The main stem from the Prescott National Forest boundary near Paulden to the vicinity of Table Mountain, approximately 14 miles above Horseshoe Reservoir, except for the segment not included in the national forest between Clarkdale and Camp Verde, North segment.

(64) San Francisco, Arizona - The main stem from confluence with the Gila upstream to the Arizona-New Mexico border, except for the segment between Clifton and the Apache National Forest.

(65) Fish Creek, New York - The entire East Branch.

(66) Black Creek, Mississippi - The segment from Big Creek Landing in Forrest County downstream to Old Alexander Bridge Landing in Stone County.

(67) Allegheny, Pennsylvania - The main stem from Kinzua Dam downstream to East Brady.

(68) Cacapon, West Virginia - The entire river.

(69) Escatawpa, Alabama and Mississippi - The segment upstream from a point approximately one mile downstream from the confluence of the Escatawpa River and Jackson Creek to a point where the Escatawpa River is joined by the Yellowhouse Branch in Washington County, Alabama, near the town of Deer Park, Alabama; and the segment of Brushy Creek upstream from its confluence with the Escatawpa to its confluence with Scarsborough Creek.

(70) Myakka, Florida - The segment south of the southern boundary of the Myakka River State Park.

(71) Soldier Creek, Alabama - The segment beginning at the point where Soldier Creek Intersects the south line of section 31, township 7 south, range 6 east, downstream to a point on the south line of section 6, township 8 south, range

6 east, which point is 1,322 feet west of the south line of section 5, township 8 south, range 6 east in the county of Baldwin, State of Alabama.

(72) Red, Kentucky - The segment from Highway numbered 746 (also known as Spradlin Bridge) in Wolf County, Kentucky, downstream to the point where the river descends below seven hundred feet above sea level (in its normal flow) which point is at the Menifee and Powell County line just downstream of the iron bridge where Kentucky Highway numbered 77 passes over the river.

(73) Bluestone, West Virginia - From its headwaters to its confluence with the New.

(74) Gauley, West Virginia - Including the tributaries of the Meadow and the Cranberry, from the headwaters to its confluence with the New.

(75) Greenbrier, West Virginia - From its headwaters to its confluence with the New.

(76) Birch, West Virginia- The main stem from the Cora Brown Bridge in Nicholas County to the confluence of the river with the Elk River in Braxton County.

(77) Colville, Alaska.

(78) Etivluk-Nigu, Alaska.

(79) Utukok, Alaska.

(80) Kanektok, Alaska.

(81) Kisaralik, Alaska.

(82) Melozitna, Alaska.

(83) Sheenjek (lower segment), Alaska.

(84) Situk, Alaska.

(85) Porcupine, Alaska.

(86) Yukon (Ramparts section), Alaska.

(87) Squirrel, Alaska.

(88) Koyuk, Alaska.

STUDIES AND REPORTS

(b)(1) The studies of rivers named in subparagraphs (28) through (55) of subsection (a) of this section shall be completed and reports thereon submitted by not later than October 2, 1979; Provided, That with respect to the rivers named in subparagraphs (33), (50), and (51), the Secretaries shall not commence any studies until (i) the State legislature has acted with respect to such rivers or (ii) one year from January 3, 1975, whichever is earlier.

(2) The study of the river named in subparagraph (56) of subsection (a) of this section shall be completed and the report thereon submitted by not later than January 3, 1976.

(3) The studies of the rivers named in paragraphs (59) through (76) of subsection (a) of this section shall be completed and reports submitted thereon not later than five full fiscal years after November 10, 1978. The study of rivers named in paragraphs (62) through (64) of subsection (a) of this section shall be completed and the report thereon submitted by not later than April 1981.

(4) There are authorized to be appropriated for the purpose of conducting the studies of the rivers named in subparagraphs (28) through (56) such sums as may be necessary, but not more than $4,060,000. There are authorized to be appropriated for the purpose of conducting the studies of the rivers named in subparagraphs (59) through (76) such sums as may be necessary.

(5) The studies of the rivers in paragraphs (77) through (88) shall be completed and reports transmitted thereon not later than three full fiscal years from December 2, 1980. For the rivers listed in paragraphs (77), (78) and (79) the studies prepared and transmitted to the Congress pursuant to section 6506(b) of Title 42 shall satisfy the requirements of this section.

(6) Studies of rivers listed in paragraphs (80) and (81) shall be completed, and reports submitted within and not later than the time when the Bristol Bay Cooperative Region Plan is submitted to Congress in accordance with section 2183 of this title.

(c) The study of any of said rivers shall be pursued in as close cooperation with appropriate agencies of the affected State and its political subdivisions as possible, shall be carried on jointly with such agencies if request for such joint study is made by the State, and shall include a determination of the degree to which the State or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the national wild and scenic rivers system.

(d) In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials. The Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all Federal agencies as potential alternative uses of the water and related land resources involved.

Sec. 6. (a) The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boudaries of any component of the national wild and scenic rivers system designated in section 3 of this Act, or hereafter designated for inclusion in the system by Act of Congress, which is administered by him, but he shall not acquire fee title to an average of more than 100 acres per mile on both sides of the river. Lands owned by a State may be acquired only by donation, and lands owned by an Indian tribe or a political subdivision of a State may not be acquired without the consent of the appropriate governing body thereof as long as the Indian tribe or political subdivision is following a plan for management and protection of the lands which the Secretary finds protects the land and assures its use for purposes consistent with this Act. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to the use of appropriations from others sources, be available to Federal departments and agencies for the acquisition of property for the purposes of this Act.

(b) If 50 per centum or more of the entire acreage within a federally administered wild, scenic, or recreational river area is owned by the United States, by the State or States within which it lies, or by political subdivisions of those States, neither Secretary shall acquire fee title to any lands by condemnation under authority of this Act. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof.

(c) Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation for the purpose of including such lands in any national wild, scenic or recreational river area, if such lands are located within any incorporated city, village, or borough which has in force and applicable to such lands a duly adopted, valid zoning ordinance that conforms with the purposes of this Act. In order to carry out the provisions of this subsection the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this Act. The standards specified in such guidelines shall have the object of (A) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this Act, and (B) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

(d) The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by

Act of Congress and, in exchange therefor, convey to the grantor any federally owned property which is under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not approximately equal, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(e) The head of any Federal department or agency having administrative jurisdiction over any lands or interests in land within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by Act of Congress is authorized to transfer to the appropriate secretary jurisdiction over such lands for administration in accordance with the provisions of this Act. Lands acquired by or transferred to the Secretary of Agriculture for the purposes of this Act within or adjacent to a national forest shall upon such acquisition or transfer become national forest lands.

(f) The appropriate Secretary is authorized to accept donations of lands and interests in land, funds, and other property for use in connection with his administration of the national wild and scenic rivers system.

(g)(1) Any owner or owners (hereinafter in this subsection referred to as "owner") of improved property on the date of its acquisition, may retain for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term not to exceed twenty-five years or, in lieu thereof, for a term ending at the death of the owner, or the death of his spouse, or the death of either or both of them. The owner shall elect the term to be reserved. The appropriate Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such date of the right retained by the owner.

(2) A right of use and occupancy retained pursuant to this subsection shall be subject to termination whenever the appropriate Secretary is given reasonable cause to find that such use and occupancy is being exercised in a manner which conflicts with the purposes of this Act. In the event of such a finding, the Secretary shall tender to the holder of that right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination. Such right of use or occupancy shall terminate by operation of law upon tender of the fair market price.

(3) The term "improved property", as used in this chapter, means a detached, one family dwelling (hereinafter referred to as "dwelling), the construction of which was begun before January 1, 1967 (except where a different date is specifically provided by law with respect to any particular river) together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the appropriate Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated.

SEC.7. (a) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is designated in Section 3 of this title as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administrati . Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary (hereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on October 2, 1968. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this chapter and would affect the component and the values to be protected by it under this chapter. Any license heretofore or hereafter issued by the Federal Power Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System pursuant to section 2 of this title and no project or undertaking so licensed shall be permitted to invade, inundate or otherwise adversely affect such river segment.

CONSTRUCTION PROJECTS ON RIVERS DESIGNATED FOR POTENTIAL ADDITION TO SYSTEM

(b) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is listed in Section 5 of this title, and no department or agency of the United States shall assist by loan,grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval -

(i) during the ten-year period following October 2, 1968 or for a three complete fiscal year period following any Act of Congress designating any river for potential addition to the national wild and scenic rivers system, whichever is later, unless, prior to the expiration of the relevant period, the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, on the basis of study, determine that such river should not be included in the national wild and scenic rivers system and notify the Committees on Interior and Insular Affairs of the United States Congress, in writing, including a copy of the study upon which the determination was made, at least one hundred and eighty days while Congress is in session prior to publishing notice to that effect in the Federal Register: Provided, That if any Act designating any river or rivers for potential addition to the national wild and scenic rivers system provides a period for the study or studies which exceeds such three complete fiscal year period the period provided for in such Act shall be substituted for the three complete fiscal year period in the provisions of this clause (i); and

(ii) during such additional period thereafter as, in the case of any river the report for

which is submitted to the President and the Congress, is necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary of the Interior for inclusion in the national wild and scenic rivers system under section 2(2)(ii) of this title, is necessary for the Secretary's consideration thereof, which additional period, however, shall not exceed three years in the first case and one year in the second.

(c) The Federal Power Commission and all other Federal agencies shall, promptly upon enactment of this Act, inform the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, of any proceedings, studies, or other activities within their jurisdiction which are now in progress and which affect or may affect any of the rivers specified in section 5, subsection (a), of this Act. They shall likewise inform him of any such proceedings, studies or other activities which are hereafter commenced or resumed before they are commenced or resumed.

(d) Nothing in this section with respect to the making of a loan or grant shall apply to grants made under the Land and Water Conservation Fund Act of 1965 (78 Stat.897; 16 U.S.C.4601-5 et seq.).

SEC.8 (a) All public lands within the authorized boundaries of any component of the national wild and scenic rivers system which is designated in section 3 of this Act or which is hereafter designated for inclusion in that system are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States.

(b) All public lands which constitute the bed or bank, or are within one-quarter mile of the bank, of any river which is listed in section 5(a) of this title are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States for the periods specified in section 7(b) of this title. Notwithstanding the foregoing provisions of this subsection or any other provision of this chapter, subject only to valid existing rights, including valid Native selection rights under the Alaska Native Claims Settlement Act, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 5(a) of this title are hereby withdrawn from entry, sale, State selection or other disposition under the public land laws of the United States for the periods specified in section 7(b) of this title.

SEC.9. (a) Nothing in this Act shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system except that -

(i) all prospecting, mining operations, and other activities on mining claims which, in the case of a component of the system designated in section 3 of this Act, have not heretofore been perfected or which, in the case of a component hereafter designated pursuant to this Act or any other Act of Congress, are not perfected before its inclusion in the system and all mining operations and other activities under a mineral lease, license, or permit issued or renewed after inclusion of a component in the system shall be subject to such regulations as the Secretary of the Interior or, in the case of national forest lands, the Secretary of Agriculture may prescribe to effectuate the purposes of this Act;

(ii) subject to valid existing rights, the perfection of, or issuance of a patent to, any mining claim affecting lands within the system shall confer or convey a right or title only to the mineral deposits and such rights only to the use of the surface and the surface resources as are reasonably required to carrying on prospecting or mining operations and are consistent with such regulations as may be prescribed by the Secretary of the Interior or, in the case of national forest lands, by the Secretary of Agriculture; and

(iii) subject to valid existing rights, the minerals in Federal lands which are part of the system and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this Act or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.

Regulations issued pursuant to paragraphs (i) and (ii) of this subsection shall, among other things, provide safeguards against pollution of the river involved and unnecessary impairment of the scenery within the component in question.

(b) The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed in section 5(a) of this title are hereby withdrawn from all forms of appropriation under the mining laws during the periods specified in section 7(b) of this title. Nothing contained in this subsection shall be construed to forbid prospecting or the issuance of leases, licenses, and permits under the mineral leasing laws subject to such conditions as the Secretary of the Interior and, in the case of national forest lands, the Secretary of Agriculture find appropriate to safeguard the area in the event it is subsequently included in the system. Notwithstanding the foregoing provisions of this subsection or any other provision of this chapter, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 5 (a) of this title, are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto, during the periods specified in section 7 (b) of this title.

SEC.10 (a) Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

(b) Any portion of a component of the national wild and scenic rivers system that is within the national wilderness preservation system, as established by or pursuant to the Act of September 3, 1964 (78 Stat.890; 16 U.S.C., ch.23), shall be subject to the provisions of both the Wilderness Act and this Act with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of these Acts the more restrictive provisions shall apply.

(c) Any component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system, and any such component that is administered by the Secretary through the Fish and Wildlife Service shall become a part of the national wildlife refuge system. The lands involved shall be subject to the provisions of this Act and the Acts under which the national park system or national wildlife system, as the case may be, is administered, and in case of conflict

between the provisions of these Acts, the more restrictive provisions shall apply. The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of the national park system and such general statutory authorities otherwise available to him for recreation and preservation purposes and for the conservation and management of natural resources as he deems appropriate to carry out the purposes of this Act.

(d) The Secretary of Agriculture, in his administration of any component of the national wild and scenic rivers system area, may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this Act.

(e) The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component. The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which include or adjoin State-or county-owned lands.

SEC. 11 (a) The Secretary of the Interior shall encourage and assist the States to consider, in formulating and carrying out their comprehensive statewide outdoor recreation plans and proposals for financing assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat.897), needs and opportunities for establishing State and local wild, scenic and recreational river areas. He shall also, in accordance with the authority contained in the Act of May 28, 1963 (77 Stat.49), provide technical assistance and advice to, and cooperate with, States, political subdivisions, and private interests, including nonprofit organizations, with respect to establishing such wild, scenic and rerreational river areas.

(b) The Secretaries of Agriculture and of Helath, Education, and Welfare shall likewise, in accordance with the authority vested in them, assist, advise, and cooperate with State and local agencies and private interests with respect to establishing such wild, scenic and recreational river areas.

SEC. 12 (a) The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 2(a)(ii), 3(a), or 5(a) of this title, shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following November 10, 1978, as may be necessary to protect such rivers in accordance with the purposes of this chapter. Such Secretary or other department or agency head shall, where appropriate, enter into written cooperative agreements with the appropriate State or local official for the planning, administration, and management of Federal lands which are within the boundaries of any rivers for which approval has been granted under section 2(a)(ii) of this title. Particular attention shall be given to scheduled timber harvesting, road construction, and similar activities which might be contrary to the purposes of this chapter.

(b) Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party.

(c) The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Secretary of the Interior and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river.

SEC. 13. (a) Nothing in this Act shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife. Hunting and fishing shall be permitted on lands and waters administered as parts of the system under applicable State and Federal laws and regulations unless, in the case of hunting, those lands or waters are within a national park or monument. The administering Secretary may, however, designate zones where, and establish periods when, no hunting is permitted for reasons of public safety, administration, or public use and enjoyment and shall issue appropriate regulations after consultation with the wildlife agency of the State or States affected.

(b) The jurisdiction of the States and the United States over waters of any stream included in a national wild, scenic or recreational river area shall be determined by established principles of law. Under the provisions of this Act, any taking by the United States of a water right which is vested under either State or Federal law at the time such river is included in the national wild and scenic rivers system shall entitle the owner thereof to just compensation. Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(c) Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this Act, or in quantities greater than necessary to accomplish these purposes.

(d) The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river area shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of this Act or its administration.

(e) Nothing contained in this Act shall be construed to alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States which contain any portion of the national wild and scenic rivers system.

(f) Nothing in this Act shall affect existing rights of any State, including the right of access, with respect to the beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scenic or recreational river area.

(g) The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may grant easements and rights-of-way upon, over, under,across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: Provided, That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this Act.

SEC. 14. The claim and allowance of the value of an easement as a charitable contribution under section 170 of title 26, United States Code, or as a gift under section 2522 of said title shall constitute an agreement by the donor on behalf of himself, his heirs, and assigns that, if the terms of the instrument creating the easement are violated, the donee or the United States may acquire the servient estate at its fair market value as of the time the easement was donated minus the value of the easement claimed and allowed as a charitable contribution or gift.

SEC. 14A. (a) Where appropriate in the discretion of the Secretary, he may lease federally

owned land (or any interest therin) which is within the boundaries of any component of the National Wild and Scenic Rivers System and which has been acquired by the Secretary under this Act. Such lease shall be subject to such restrictive covenants as may be necessary to carry out the purposes of this Act.

(b) Any land to be leased by the Secretary under this section shall be offered first for such lease to the person who owned such land immediately before its acquisition by the United States.

SEC.15. Nothwithstanding any other provision to the contrary in sections 3 and 9 of this Act, with respect to components of the National Wild and Scenic Rivers System in Alaska designated by paragraphs (38) through (50) of section 3 (a) of this Act -

(1) the boundary of each such river shall include an average of not more than six hundred and forty acres per mile on both sides of the river. Such boundary shall not include any lands owned by the State or a political subdivision of the State nor shall such boundary extend around any private lands adjoining the river in such manner as to surround or effectively surround such private lands; and

(2) the withdrawal made by paragraph (iii) of section 9(a) shall apply to the minerals in Federal lands which constitute the bed or bank or are situated within one-half mile of the bank of any river designated a wild river by the Alaska National Interest Lands Conservation Act.

(b) Section 9(b) of such Act is amended by adding the following at the end thereof: "Notwithstanding the foregoing provisions of this subsection or any other provision of this Act, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 5(a), are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto, during the periods specified in section 7(b) of this Act.".

SEC. 16. As used in this Act, the term -

(a) "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(b) "Free-flowing", as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: Provided, That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the national wild and scenic rivers system.

(c) "Scenic easement" means the right to control the use of land (including the air space above such land) for the purpose of protecting the scenic view from the river, but such control shall not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement.

SEC. 17. There are hereby authorized to be appropriated, including such sums as have heretofore been appropriated, the following amounts for land acquisition for each of the rivers described in section 3 (a) of this title:

Clearwater, Middle Fork, Idaho $3,935,700;
Rio Grande, New Mexico, $253,000;
Rogue, Oregon, $15,147,000;
St. Croix, Minnesota and Wisconsin $21,769,000;
Salmon, Middle Fork, Idaho, $1,837,000; and
Wolf, Wisconsin, $142,150.

CLEAN WATER ACT

Section 508 Clean Water Act of 1977

FEDERAL PROCUREMENT

SEC. 508. (a) No Federal agency may enter into any contract with any person, who has been convicted of any offense under section 309 (c) of this Act, for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

(b) The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

(c) In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than one hundred and eighty days after enactment of this Act, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(e) The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 51

[Docket No. R-83-774; FR-1187]

Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule clarifies and expands current HUD policy governing properties exposed to unusual hazards in the vicinity of civil and military airports. The effect of the rule is to limit the HUD financial assistance given to projects that are not compatible with land use plans around civil airports and military airfields. This rule makes HUD policy consistent with existing Department of Defense (DOD) and Federal Aviation Administration (FAA) policies and programs, and with Office of Management and Budget directives.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: James F. Miller or Gretchen Van Hyning, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410; (202) 755-7225. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Effect of the Rule

This regulation amends 24 CFR Part 51 to add a new Subpart D which establishes a specific Departmental policy on siting HUD assisted projects in Runway Clear Zones, Clear Zones and Accident Potential Zones. The regulation applies principally to new construction or substantial or major modernization and rehabilitation. In cases of the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone there is a requirement that the buyer be provided with information regarding the location of the property in a Runway Clear Zone or Clear Zone. The regulation applies to most HUD programs including Community Development Block Grants and Urban Development Action Grants. The regulation applies to all military airfields and to civil commercial service airports.

In general, HUD will not provide assistance for actions to take place in Runway Clear Zones at civil airports or Clear Zones at military airfields. A Runway Clear Zone typically includes about 80 acres and a Clear Zone includes about 200 acres. There are Runway Clear Zones and Clear Zones at each end of each active runway at the airport or airfield. Assistance may be provided if the proposed project or facility is one which is not frequently used or occupied by people and the airport operator will provide written assurances that the land is not planned for acquisition as part of a clear zone acquisition program.

HUD will only provide assistance for projects in Accident Potential Zones at military airfields if the project is basically consistent with the recommendations of the Department of Defense's *Land Use Compatibility Guidelines For Accident Potential Zones* contained in 32 CFR Part 256. This policy only applies to military airfields as there are no Accident Potential Zones at civil airports.

Background

The problem of preventing incompatible development around our civil airports and military airfields is a long-standing one. As centers of economic activity, civil airports and military airfields naturally attract development. At the same time the noise and accident potential problems that are inevitable side effects of aircraft operations make many types of development unsuitable for locations in the immediate vicinity of the airports and airfields. While these problems have existed for quite some time, the record of local, state and Federal response has been spotty and uneven.

In the early 1970's, the General Services Administration looked at the issue of compatible development around Federal airfields and found that the general increase of development surrounding Federal airfields had not always considered the noise levels and safety factors of flight operations. In order to increase the level of consideration given to noise and safety by at least the Federal agencies whose decisions affected land use around Federal airfields, the General Services Administration issued, in 1975, a Federal Management Circular (FMC 75-2 *Compatible Land Uses At Federal Airfields*) which specifically directed all Federal agencies to make sure that their actions were compatible with the land use recommendations prepared by the operating agencies for Federally owned airports and airfields.

As background justification for this policy, GSA concluded:

> Federal airfields are employment centers. Nearby land holdings are attractive investments for housing developments, supportive business activities, and service industries. The general increase of development surrounding Federal airfields has not always considered noise levels and safety factors of flight operations. Complaints from residential and business owners have in some instances caused such actions as reduced takeoff weight, restriction of hours of operation, reduction of the number of flights, changes in takeoff and landing patterns, and noise abatement procedures. This type of action results in declining operating efficiencies which sometimes lead to closure or reduction in mission capability of multimillion dollar installations. (40 FR 48346 (Oct. 15, 1975), 34 CFR 236.2(b))

The Circular required the Department of Defense and other Federal agencies that hold and/or operate airfields to develop and update airfield land use plans for each Federal airfield.

> Each plan shall contain an analysis of land use compatibility problems and potential solutions which can serve as the basis for Federal real property acquisition and disposal decisions. (40 FR 48347, 34 CFR 236.4(a))

GSA recognized that other Federal agencies that do not hold and/or operate Federal airports administer programs that affect land uses near such airports. Their actions could significantly affect the safety of airport operations and of those using the facilities assisted by these agencies. The Circular placed an affirmative obligation on these agencies to adjust their policies to be consistent with the mandate of the Circular:

> All Federal agencies (in addition to those operating airfields) having programs which affect or may affect the use of land near Federal airfields shall ensure that their programs serve to foster compatible land use in accordance with the plans developed by the operating agencies. (40 FR 48347, 34 CFR Part 236.5(c))

The safety problem has been documented by the United States Air Force which conducted a study of all major accidents that occurred within a 10 nautical mile radius of Air Force installations during the period 1968 through 1972 and which found that a very high percentage of all aircraft accidents took place in the immediate

area beyond the runway. Of the 369 accidents studied, over 73% occurred either on the runway or within 15,000 feet of the end of the runway. The remaining 26% were scattered throughout the 10 nautical mile radius area. Similar data for civilian aircraft crashes show that over 80% of all air carrier accidents over the past 20 plus years have occurred within 3,000 feet of the end of the runway (approximately the area that would normally be defined as the Runway Clear Zone). (Air Line Pilots Association, *ALPA Rescue and Fire Committee Position Papers*, Washington, D.C., April 1981, p. 12) Thus, while it is impossible to predict if or when an accident may occur at a given airport or airfield, it is possible to predict where an accident is most likely to take place.

Both the Department of Defense and the Federal Aviation Administration have programs designed to bring the highest risk areas, called Runway Clear Zones at civil airports and Clear Zones at military airfields, under the control of the airport operator, thus ensuring that no incompatible development takes place. Even though these programs have been in existence for a number of years, however, there are still areas that are not controlled by the airport operators. In addition, at military airfields there are two other areas of significant accident potential, known as Accident Potential Zones, that are not part of any purchase program.

HUD's Regulatory Response

At the time Federal Management Circular 75–2 was issued, HUD already had in place a policy which addressed the noise issue. This policy established standards of acceptability for noise levels at sites proposed for HUD assistance, subsidy or insurance. The policy also established requirements for noise attenuation. Under this policy, noise sensitive projects in the highest noise areas would not normally be approved for HUD assistance, subsidy or insurance. This policy has been updated as a regulation and to reflect improved techniques for describing the noise environment. The current HUD noise policy is contained in the Code of Federal Regulations, Title 24 Part 51, Subpart B.

For many years HUD assumed that its noise policy, in combination with guidance on unusual hazards that was contained in Housing valuation handbooks, was adequate to prevent HUD funds from being used to promote development in these high accident potential areas. Since these areas were so close to the ends of the runways, it was assumed that they would also be exposed to high noise levels. Over the past few years, however, HUD has discovered that there are some instances where portions of Runway Clear Zones, Clear Zones and Accident Potential Zones are not in the highest noise level areas and as a result HUD funds could be used to assist in the development of incompatible uses. (For example, HUD recently reviewed an environmental assessment for a project proposed at an Air Force installation where almost the entire Accident Potential Zone was in an area that was completely acceptable on the basis of noise alone.) In addition it was found that the guidance on unusual hazards in the Housing handbooks was not specific enough to cover Runway Clear Zones, Clear Zones and Accident Potential Zones. HUD regulations, therefore, were not totally in compliance with the Federal Management Circular and additional guidance for the field was necessary. Thus it was determined that this regulation should be issued.

Public Comment

On December 18, 1980 HUD published in the **Federal Register**, at 45 FR 83261, a proposal to add a new Subpart D to 24 CFR Part 51. Sixteen comments were received from a variety of organizations and public agencies. Seven, including letters from the Department of the Navy, the Department of the Air Force, the Aviation Department of Kansas City, the Air Line Pilots Association, the City of San Antonio, the Public Health Service and the Columbus Metropolitan Airport of Columbus, Georgia, supported the regulation.

Four others (including comments from the Air Transport Association and the Santa Barbara Airport Land Use Commission) raised concerns over the possible application of Accident Potential Zones to civil airports. HUD never intended to define Accident Potential Zones around civil airports since it would be inappropriate to make such an extrapolation from the military experience. The final regulation is revised to make it clear that the Accident Potential Zone will apply only to military, not civil, airports. The only areas around civil airports that the regulation will affect are those contained within the Runway Clear Zones as defined by FAA regulation 14 CFR Part 152.

Two comments which raised questions about the applicability of the regulation seemed to indicate that there was some confusion as to which airports were affected. One commentor, for example, was unclear as to whether the regulation would apply to privately owned airports, or to heliports or rotorcraft facilities. To avoid ambiguity as to whether the policy applies to an area near a given airport, HUD has limited the applicability of the regulation to those existing airports listed as commercial service airports in the *National Plan of Integrated Airport Systems*. (The National Plan of Integrated Airport Systems is prepared by the Federal Aviation Administration as required by the Airport and Airway Improvement Act of 1982.) The current Plan lists 568 airports as air carrier airports. While this change is more limited than the coverage originally proposed, the Department considers the severity of the problem to be greatest at these airports because of the size and type of aircraft flown and the size of the Runway Clear Zones involved. These airports are also a readily identifiable group, thus preventing problems from arising over whether a given airport is or is not affected by this regulation.

At this point, it should be noted that the Federal Management Circular itself only addresses those civil airports owned or operated by the Federal government. (The Federally owned airports are Washington National Airport and Dulles International Airport, both in the Washington, D.C. area.) All commercial service airports, however, whether Federally owned or not, generate economic activity and attract growth and therefore experience the same problems discussed in the Circular. The Air Line Pilots Association's findings, discussed above, on the pattern of accidents was based on a survey of all commercial service airports, not just the Federally owned ones. This situation accounts, in part, for the broad reach of the FAA requirements for airport operators to identify and, if at all possible, control the Runway Clear Zones at all air carrier airports. (14 CFR Part 152) Since the problems identified in the Federal Management Circular are common to civil airports not covered by the Circular, the Department finds it appropriate to apply this regulation to all commercial service airports and not just the Federally owned or operated ones specifically covered by the Federal Management Circular.

The remaining comments touched on a variety of points. First, the Federal Aviation Administration indicated that while they certainly supported compatible land use planning, they did not agree with the use of phrases such as high risk areas or Accident Potential Zones. HUD has deleted the phrase high risk areas from the regulation, however the term Accident Potential Zone is a specific Department of Defense term

which must be used relative to military airports to insure accuracy. This term does not apply to civil airports. In another comment the Environmental Protection Agency urged HUD to strengthen the policy on Clear Zones and Runway Clear Zones and to limit the authority of block grant city certifying officers to approve projects in the Accident Potential Zones. HUD believes that the policy as proposed adequately addresses the concern and that to make the policy much more stringent would create a regulatory burden that is disproportionate to the problem. Finally, an engineering firm from Illinois commented that they felt the regulation would jeopardize the redevelopment and rehabilitation of many buildings currently located in either Runway Clear Zones or in Clear Zones and Accident Potential Zones. While there will be an impact upon some existing structures, the number will be fairly small. Most Runway Clear Zones, Clear Zones and Accident Potential Zones do not currently contain extensive development. The purpose of the regulation is to help ensure that further development does not take place. Existing programs should not encourage the continued location of people in Accident Potential Zones.

Implementation

The following discussion clarifies several implementation issues.

First, the regulation provides discretion for approval of projects in the Accident Potential Zones at military airfields. This discretion is limited by guidance provided to HUD field offices and Community Block Grant recipients. Section 51.303(b) states that, to be approved, projects in the Accident Potential Zones must be consistent with the recommendations in the *Land Use Compatibility Guidelines for Accident Potential Zones* contained in DOD Instruction 4165.57, 32 CFR Part 256. These guidelines were developed during the Air Force study of Air Force aircraft accidents and provide fairly detailed recommendations for an extensive list of land uses. They will give field staff sufficient guidance to make sure that there is a reasonably consistent pattern of approvals.

Second, the regulation states that the only Runway Clear Zones, Clear Zones and Accident Potential Zones that will be used to implement this part will be those prepared in accordance with the appropriate FAA or DOD regulation. In most cases the dimensions of the Runway Clear Zone, Clear Zone or Accident Potential Zone will have been published as part of a public report such as an Environmental Impact Statement or an Air Installation Compatible Use Zone (AICUZ) report. Many field offices already have these documents on file, particularly the military's AICUZ reports. HUD will continue its coordination with the FAA and the military to make sure that field offices have ready access to the reports.

Finally, it is the environmental officers in the HUD field offices who will bear the primary responsibility for implementing this rule. They will do so as part of the normal project review process, using existing forms and procedures. As part of the Department's overall environmental regulations, 24 CFR Part 50, forms were developed to document compliance with a variety of environmental standards including all Departmental standards for the general category of hazards. Part 51 is cited as the general reference for this category and as a subpart to Part 51, this rule would automatically be included. The forms contained in Part 50 were designed for use for all types of Departmental actions, including those exempted from the environmental assessment requirements of the National Environmental Policy Act of 1969.

Other Supplementary Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, Department of HUD, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it only affects a limited number of airports and airfields. The number of civil airports and military airfields covered totals less than 1000 nationally, therefore the potential for significant impact is small.

The Department has also determined that this regulation represents the most cost effective way to help prevent incompatible development in the Runway Clear Zones, Clear Zones and Accident Potential Zones and that the potential benefits to society outweigh any potential costs.

The basic benefit of this regulation will be to reduce the chances for people and property to be exposed to the hazards associated with aircraft operations. The people who receive the benefit will be the public at large. A secondary benefit is to protect the investments of HUD and local governments by limiting the number and type of projects located in these hazardous areas. A final benefit is to protect the investments of the Department of Defense, the Federal Aviation Administration and local aviation authorities. The presence of incompatible development in the Runway Clear Zones, Clear Zones or Accident Potential Zones often is a basis for pressure for airports and airfields to close or to cease or limit operations.

Since this regulation is not the type of regulation which requires local government, private industry or individuals to actually do something, it does not generate any direct costs to local government, private industry or individuals. The regulation may, however, generate some indirect costs, or reduce expected profits in that it would limit the types of development that could occur with HUD assistance in these areas. It is impossible to predict whether this would ever actually be a problem. There are too many other local variables which would be at work. Factors such as local markets for various types of land use, the suitability of the land for the various uses, and local planning and zoning would all influence the value of the land.

HUD does not, however, anticipate that the indirect costs would be significant on a nationwide basis because: (a) The amount of land where HUD participation would be most severely limited is not really all that great, about 80 acres at civil airports and 200 acres at military airfields, and (b) in the other areas, not all uses are prohibited from HUD assistance, thus the land can still be productively used, it simply may not be the use the owner or local government originally had in mind.

This rule is listed at 48 FR 18089 as item CPD–20–79 in the Department's Semiannual Agenda of Regulations published on April 25, 1983 pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 51

Noise control, Quiet Communities Act.

PART 51—[AMENDED]

Accordingly, Title 24, Part 51 of the CFR is amended by adding a new Subpart D to read as follows:

Subpart D—Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

Sec.
51.300 Purpose.
51.301 Definitions.
51.302 Coverage.
51.303 General policy.
51.304 Responsibilities
51.305 Implementation.

Authority: Section 2 of the Housing Act of 1949 as amended, 42 U.S.C. 1441, affirmed by Section 2 of the Housing and Urban Development Act of 1969, Pub. L. No. 90–448; Section 7(d) of the Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3535(d); Office of Management and Budget, Federal Management Circular 75–2: Compatible Land Uses At Federal Airfields.

Subpart D—Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

§ 51.300 Purpose.

(a) The Department of Housing and Urban Development finds that HUD assisted or insured projects and their occupants in Runway Clear Zones, Clear Zones and Accident Potential Zones are exposed to a significant risk of personal injury or property damage from aircraft accidents.

(b) It is the purpose of this Subpart to promote compatible land uses around civil airports and military airfields by identifying suitable land uses for Runway Clear Zones at civil airports and Clear Zones and Accident Potential Zones at military airfields and by establishing them as standards for providing HUD assistance, subsidy or insurance

§ 51.301 Definitions.

For the purposes of this regulation, the following definitions apply:

(a) Accident Potential Zone. An area at military airfields which is beyond the Clear Zone. The standards for the Accident Potential Zones are set out in Department of Defense Instruction 4165.57, "Air Installations Compatible Use Zones," November 8, 1977, 32 CFR Part 256. There are no Accident Potential Zones at civil airports.

(b) Airport Operator. The civilian or military agency, group or individual which exercises control over the operations of the civil airport or military airfield.

(c) Civil Airport. An existing commercial service airport as designated in the National Plan of Integrated Airport Systems prepared by the Federal Aviation Administration in accordance with Section 504 of the Airport and Airway Improvement Act of 1982.

(d) Runway Clear Zones and Clear Zones. Areas immediately beyond the ends of a runway. The standards for Runway Clear Zones for civil airports are established by FAA regulation 14 CFR Part 152. The standards for Clear Zones for military airfields are established by DOD Instruction 4165.57, 32 CFR Part 256.

§ 51.302 Coverage.

(a) These policies apply to HUD programs which provide assistance, subsidy or insurance for construction, land development, new communities, community development or redevelopment or any other provision of facilities and services which are designed to make land available for construction. When the HUD assistance, subsidy or insurance is used to make land available for construction rather than for the actual construction, the provision of the HUD assistance, subsidy or insurance shall be dependent upon whether the facility to be built is itself acceptable in accordance with the standards in § 51.303.

(b) These policies apply not only to new construction but also to substantial or major modernization and rehabilitation and to any other program which significantly prolongs the physical or economic life of existing facilities or which, in the case of Accident Potential Zones:

(1) Changes the use of the facility so that it becomes one which is no longer acceptable in accordance with the standards contained in § 51.303(b);

(2) Significantly increases the density or number of people at the site; or

(3) Introduces explosive, flammable or toxic materials to the area.

(c) Except as noted in § 51.303(a)(3), these policies do not apply to HUD programs where the action only involves the purchase, sale or rental of an existing property without significantly prolonging the physical or economic life of the property

(d) The policies do not apply to research or demonstration projects which do not result in new construction or reconstruction, to interstate land sales registration, or to any action or emergency assistance which is provided to save lives, protect property, protect public health and safety, or remove debris and wreckage.

§ 51.303 General policy.

It is HUD's general policy to apply standards to prevent incompatible development around civil airports and military airfields.

(a) HUD policy for actions in Runway Clear Zones and Clear Zones.

(1) HUD policy is not to provide any assistance, subsidy or insurance for projects and actions covered by this part except as stated in § 51.303(a)(2) below.

(2) If a project proposed for HUD assistance, subsidy or insurance is one which will not be frequently used or occupied by people, HUD policy is to provide assistance, subsidy or insurance only when written assurances are provided to HUD by the airport operator to the effect that there are no plans to purchase the land involved with such facilities as part of a Runway Clear Zone or Clear Zone acquisition program.

(3) Special notification requirements for Runway Clear Zones and Clear Zones. In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, HUD (or the Grant Recipient under Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301 *et seq.*) shall advise the buyer that the property is in a Runway Clear Zone or Clear Zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

(b) HUD policy for actions in Accident Potential Zones at Military Airfields. HUD policy is to discourage the provision of any assistance, subsidy or insurance for projects and actions in the Accident Potential Zones. To be approved, projects must be generally consistent with the recommendations in the *Land Use Compatibility Guidelines For Accident Potential Zones* chart contained in DOD Instruction 4165.57, 32 CFR Part 256.

§ 51.304 Responsibilities.

(a) The following persons have the authority to approve actions in Accident Potential Zones:

(1) For Title I of the Housing and Community Development Act of 1974, as

amended, 42 U.S.C. 5301 *et seq*: the certifying officer of the grant recipient as defined in Part 58 of this Title.

(2) For all other HUD programs: the program personnel having approval authority for the project.

(b) The following persons have the authority to approve actions in Runway Clear Zones and Clear Zones:

(1) For Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301 *et seq*: The certifying officer of the grant recipient as defined in Part 58 of this Title.

(2) For all other HUD programs: the Regional Administrator.

§ 51.305 Implementation.

(a) Projects already approved for assistance. This regulation does not apply to any project approved for assistance prior to the effective date of the regulation whether the project was actually under construction at that date or not.

(b) Acceptable data on Runway Clear Zones, Clear Zones and Accident Potential Zones. The only Runway Clear Zones, Clear Zones and Accident Potential Zones which will be recognized in applying this part are those provided by the airport operators and which for civil airports are defined in accordance with FAA regulations 14 CFR Part 152 or for military airfields, DOD Instruction 4165.57, 32 CFR Part 256. All data, including changes, related to the dimensions of Runway Clear Zones for civil airports shall be verified with the nearest FAA Airports District Office before use by HUD.

(c) Changes in Runway Clear Zones, Clear Zones, and Accident Potential Zones. If changes in the Runway Clear Zones, Clear Zones or Accident Potential Zones are made, the field offices shall immediately adopt these revised zones for use in reviewing proposed projects.

(d) The decision to approve projects in the Runway Clear Zones, Clear Zones and Accident Potential Zones must be documented as part of the enviornmental assessment or, when no assessment is required, as part of the project file.

Dated: December 30, 1983.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 84-378 Filed 1-5-84; 8:45 am]

BILLING CODE 4210-32-M

Section III

Labor Requirements

PUBLIC LAW 87-581

AN ACT

To establish standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Work Hours and Safety Act of 1962" and title I may be cited as the "Contract Work Hours and Safety Standards Act".

TITLE I-CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

SEC.101. As used herein, the term "Secretary" means the Secretary of Labor, United States Department of Labor.

SEC.102.(a) Notwithstanding any other provision of law, the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on any contract of the character specified in section 103 shall be computed on the basis of a standard workday of eight hours and a standard workweek of forty hours, and work in excess of such standard workday or workweek shall be permitted subject to the provisions of this section. For each workweek in which any such laborer or mechanic is so employed, such wages shall include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in the workweek, as the case may be.

(b) The following provisions shall be a condition of every contract of the character specified in section 103 and of any obligation of the United States, any territory, or the District of Columbia in connection therewith:

(1) No contractor or subcontactor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic, in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek except in accordance with the provisions of this Act; and

(2) In the event of violation of the provisions of paragraph (1), the contractor and any subcontractor responsible therefor shall be liable to such affected employee for his unpaid wages and shall, in addition, be liable to the United States (or, in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages as provided therein. Such liquidated damages shall be computed, with respect to each individual employed as a laborer or mechanic in violation of any provision of this Act, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of standard workweek of forty hours without payment of the overtime wages required by this Act. The governmental agency for which the contract work is done or by which financial assistance for the work is provided may withhold, or cause to be withheld, subject to the provisions of section 104, from any moneys payable on account of work performed by a contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as herein provided.

SEC.103.(a) The provisions of this Act shall apply, except as otherwise provided, to any contract which may require or involve the employment of laborers or mechanics upon a public work of the United States, of any territory, or of the District of Columbia, and to any other contract which may require or invlove the employment of laborers or mechanics if such contract is one (1) to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a party, or (2) which is made for or on behalf of the United States, any agency or instrumentality thereof, any territory, or the District of Columbia, or (3) which is a contract for work financed in whole or in part by loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof under any statute of the United States providing wage standards for such work: Provided, That the provisions of section 102, shall not apply to work where the assistance from the United States or any agency or instrumentality as set forth above is only in that nature of a loan guarantee, or insurance. Except as otherwise expressly provided, the provisions of the Act shall apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor in the performance of any part of the work contemplated by such contract, and for purposes of this Act, laborers and mechanics shall include workmen performing services in connection with dredging or rock excavation in any river or harbor of the United States or of any territory or of the District of Columbia, but shall not include any employee employed as a seaman.

(b) This Act shall not apply to contracts for transportation by land, air, or water, or for the transmission of intelligence, or for the purchase of supplies or materials or articles ordinarily available in the open market. This Act shall not apply with respect to any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35-45).

SEC.104.(a) Any officer or person designated as inspector of the work to be performed under any contract of the character specified in section 103, or to aid in the enforcement or fulfillment thereof shall, upon observation or investigation, forthwith report to the proper officer of the United States, of any territory or possession, or of the District of Columbia, all violations of the provisions of this Act occurring in the performance of such work, together with the name of each laborer or mechanic who was required or permitted to work in violation of such provisions and the day or days of such violation. The amount of unpaid wages and liquidated damages owing under the provisions of this Act shall be administratively determined and the officer or person whose duty it is to approve the payment of moneys by the United States, the territory, or the District of Columbia in connection with the performance of the contract work shall direct the amount of such liquidated damages to be withheld for the use and benefit of the United States, said territory, or said District, and shall direct the amount of such unpaid wages to be withheld for the use and benefit of the laborers and mechanics who were not compensated as required under the provisions of this Act. The Comptroller General of the United States is hereby authorized and directed to pay directly to such laborers and mechanics, from the sums withheld on account of underpayments of wages, the respective amounts administratively determined to be due, if the funds withheld are adequate, and, if not, an equitable proportion of such amounts.

(b) If the accrued payments withheld under the terms of the contracts, as aforesaid, are insufficient to reimburse all the laborers and

mechanics with respect to whom there has been a failure to pay the wages required pursuant to this Act, such laborers and mechanics shall, in the case of a department or agency of the Federal Government, have the rights of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(c) Any contractor or subcontractor aggrieved by the withholding of a sum as liquidated damages as provided in this Act shall have the right, within sixty days thereafter, to appeal to the head of the agency of the United States or of the territory for which the contract work is done or by which financial assistance for the work is provided, or to the Commissioners of the District of Columbia in the case of liquidated damages withheld for the use and benefit of said District. Such agency head or Commissioners, as the case may be, shall have authority to review the administrative determination of liquidated damages and to issue a final order affirming such determination; or, if it is found that the sum determined is incorrect or that the contractor or subcontractor violated the provisions of this Act inadvertently notwithstanding the exercise of due care on his part and that of his agents, recommendations may be made to the Secretary that an appropriate adjustment in liquidated damages be made, or that the contractor or subcontractor be relieved of liability for such liquidated damages. The Secretary shall review all pertinent facts in the matter and may conduct such investigations as he deems necessary, so as to affirm or reject the recommendation. The decision of the Secretary shall be final. In all such cases in which a contractor or subcontractor may be aggrieved by a final order for the withholding of liquidated damages as hereinbefore provided, such contractor or subcontractor may, within sixty days after such final order, file a claim in the Court of Claims: Provided, however, That final orders of the agency head, the Commissioners of the District of Columbia or the Secretary, as the case may be, shall be conclusive with respect to findings of fact if such findings are supported by substantial evidence.

(d) Reorganization Plan Numbered 14 of 1950 (15 F.R. 3175; 64 Stat. 1267) shall be applicable with respect to the provisions of this Act, and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, 54 Stat. 1236, 63 Stat. 108; 40 U.S.C. 276c), shall be applicable with respect to those contractors and subcontractors referred to therein who are engaged in the performance of contracts subject to the provisions of this Act.

SEC. 105. The Secretary may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business.

SEC. 106. Any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed in the performance of any work contemplated by any contract to which this Act applies, who shall intentionally violate any provision of this Act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall, upon conviction, be punished by a fine of not to exceed $1,000 or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.

SEC.107.(a) It shall be a condition of each contract which is entered into under legislation subject to Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267), and is for construction, alteration, and/or repair, including painting and decorating, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary by regulation based on proceedings pursuant to section 553 of title 5, United States Code, provided that such proceedings include a hearing of the nature authorized by said section. In formulating such standards, the Secretary shall consult with the Advisory Committee created by subsection (e).

(b) The Secretary is authorized to make such inspections, hold such hearings, issue such orders, and make such decisions based on findings of fact, as are deemed necessary to gain compliance with this section and any health and safety standard promulgated by the Secretary under subsection (a), and for such purposes the Secretary and the United States district courts shall have the authority and jurisdiction provided by sections 4 and 5 of the Act of June 30, 1936 (41 U.S.C.38, 39). In the event that the Secretary of Labor determines noncompliance under the provisions of this section after an opportunity for an adjudicatory hearing by the Secretary of any condition of a contract of a type described in clause (1) or (2) of section 103(a) of this Act, the governmental agency for which the contract work is done shall have the right to cancel the contract, and to enter into other contracts for the completion of the contract work, charging any additional cost to the original contractor. In the event of noncompliance, as determined by the Secretary after an opportunity for an adjudicatory hearing by the Secretary, of any condition of a contract of a type described in clause (3) of section 103(a), the governmental agency by which financial guarantee, assistance, or insurance for the contract work is provided shall have the right to withhold any such assistance attributable to the performance of the contract. Section 104 of this Act shall not apply to the enforcement of this section.

(c) The United States district courts shall have jurisdiction for cause shown, in any actions brought by the Secretary, to enforce compliance with the construction safety and health standard promulgated by the Secretary under subsection (a).

(d) (1) If the Secretary determines on the record after an opportunity for an agency hearing that, by repeated willful or grossly negligent violations of this Act, a contractor or subcontractor has demonstrated that the provisions of subsections (b) and (c) are not effective to protect the safety and health of his employees, the Secretary shall make a finding to that effect and shall, not sooner than thirty days after giving notice of the findings to all interested persons, transmit the name of such contractor or subcontractor to the Comptroller General.

(2) The Comptroller General shall distribute each name so transmitted to him to all agencies of the Government. Unless the Secretary otherwise recommends, no contract subject to this section shall be awarded to such contractor or subcontractor or to any person in which such contractor or subcontractor has a substantial interest until three years have elapsed from the date the name is transmitted to the Comptroller General. If, before the end of such three-year period, the Secretary, after affording interested persons due notice and opportunity for hearing, is satisfied that a contractor or subcontractor whose name he has transmitted to the Comptroller General will thereafter comply

responsibly with the requirements of this section, he shall terminate the application of the preceding sentence to such contractor or subcontractor (and to any person in which the contractor or subcontractor has a substantial interest); and when the Comptroller General is informed of the Secretary's action he shall inform all agencies of the Government thereof.

(3) Any person aggrieved by the Secretary's action under subsections (b) or (d) may, within sixty days after receiving notice thereof, file with the appropriate United States court of appeals a petitition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, who shall thereupon file in the court the record upon which he based his action, as provided in section 2112 of title 28, United States Code. The findings of fact by the Secretary, if supported by substantial evidence, shall be final. The Court shall have power to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, the order of the Secretary or the appropriate Government agency. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(e)(1) The Secretary shall establish in the Department of Labor an Advisory Committee on Construction Safety and Health (hereinafter referred to as the 'Advisory Committee') consisting of nine members appointed, without regard to the civil service laws, by the Secretary. The Secretary shall appoint one such member as Chairman. Three members of the Advisory Committee shall be persons representative of contractors to whom this section applies, three members shall be persons representative of employees primarily in the building trades and construction industry engaged in carrying out contracts to which this section applies, and three public representatives who shall be selected on the basis of their professional and technical competence and experience in the construction health and safety field.

(2) The Advisory Committee shall advise the Secretary in the formulation of construction safety and health standards and other regulations, and with respect to policy matters arising in the administration of this section. The Secretary may appoint such special advisory and technical experts or consultants as may be necessary to carry out the functions of the Advisory Committee.

(3) Members of the Advisory Committee shall, while serving on the business of the Advisory Committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

(f) The Secretary shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe working conditions in employments covered by the Act, and to collect such reports and data and to consult with and advise employers as to the best means of preventing injuries.

Approved August 13, 1962
Amended August 9, 1969.

PUBLIC LAW 87-581

AN ACT

To establish standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Work Hours and Safety Act of 1962" and title I may be cited as the "Contract Work Hours and Safety Standards Act".

TITLE I-CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

SEC.101. As used herein, the term "Secretary" means the Secretary of Labor, United States Department of Labor.

SEC.102.(a) Notwithstanding any other provision of law, the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on any contract of the character specified in section 103 shall be computed on the basis of a standard workday of eight hours and a standard workweek of forty hours, and work in excess of such standard workday or workweek shall be permitted subject to the provisions of this section. For each workweek in which any such laborer or mechanic is so employed, such wages shall include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in the workweek, as the case may be.

(b) The following provisions shall be a condition of every contract of the character specified in section 103 and of any obligation of the United States, any territory, or the District of Columbia in connection therewith:

(1) No contractor or subcontactor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic, in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek except in accordance with the provisions of this Act; and

(2) In the event of violation of the provisions of paragraph (1), the contractor and any subcontractor responsible therefor shall be liable to such affected employee for his unpaid wages and shall, in addition, be liable to the United States (or, in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages as provided therein. Such liquidated damages shall be computed, with respect to each individual employed as a laborer or mechanic in violation of any provision of this Act, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of standard workweek of forty hours without payment of the overtime wages required by this Act. The governmental agency for which the contract work is done or by which financial assistance for the work is provided may withhold, or cause to be withheld, subject to the provisions of section 104, from any moneys payable on account of work performed by a contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as herein provided.

SEC.103.(a) The provisions of this Act shall apply, except as otherwise provided, to any contract which may require or involve the employment of laborers or mechanics upon a public work of the United States, of any territory, or of the District of Columbia, and to any other contract which may require or invlove the employment of laborers or mechanics if such contract is one (1) to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a party, or (2) which is made for or on behalf of the United States, any agency or instrumentality thereof, any territory, or the District of Columbia, or (3) which is a contract for work financed in whole or in part by loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof under any statute of the United States providing wage-standards for such work: Provided, That the provisions of section 102, shall not apply to work where the assistance from the United States or any agency or instrumentality as set forth above is only in that nature of a loan guarantee, or insurance. Except as otherwise expressly provided, the provisions of the Act shall apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor in the performance of any part of the work contemplated by such contract, and for purposes of this Act, laborers and mechanics shall include workmen performing services in connection with dredging or rock excavation in any river or harbor of the United States or of any territory or of the District of Columbia, but shall not include any employee employed as a seaman.

(b) This Act shall not apply to contracts for transportation by land, air, or water, or for the transmission of intelligence, or for the purchase of supplies or materials or articles ordinarily available in the open market. This Act shall not apply with respect to any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35-45).

SEC.104.(a) Any officer or person designated as inspector of the work to be performed under any contract of the character specified in section 103, or to aid in the enforcement or fulfillment thereof shall, upon observation or investigation, forthwith report to the proper officer of the United States, of any territory or possession, or of the District of Columbia, all violations of the provisions of this Act occurring in the performance of such work, together with the name of each laborer or mechanic who was required or permitted to work in violation of such provisions and the day or days of such violation. The amount of unpaid wages and liquidated damages owing under the provisions of this Act shall be administratively determined and the officer or person whose duty it is to approve the payment of moneys by the United States, the territory, or the District of Columbia in connection with the performance of the contract work shall direct the amount of such liquidated damages to be withheld for the use and benefit of the United States, said territory, or said District, and shall direct the amount of such unpaid wages to be withheld for the use and benefit of the laborers and mechanics who were not compensated as required under the provisions of this Act. The Comptroller General of the United States is hereby authorized and directed to pay directly to such laborers and mechanics, from the sums withheld on account of underpayments of wages, the respective amounts administratively determined to be due, if the funds withheld are adequate, and, if not, an equitable proportion of such amounts.

(b) If the accrued payments withheld under the terms of the contracts, as aforesaid, are insufficient to reimburse all the laborers and

mechanics with respect to whom there has been a failure to pay the wages required pursuant to this Act, such laborers and mechanics shall, in the case of a department or agency of the Federal Government, have the rights of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(c) Any contractor or subcontractor aggrieved by the withholding of a sum as liquidated damages as provided in this Act shall have the right, within sixty days thereafter, to appeal to the head of the agency of the United States or of the territory for which the contract work is done or by which financial assistance for the work is provided, or to the Commissioners of the District of Columbia in the case of liquidated damages withheld for the use and benefit of said District. Such agency head or Commissioners, as the case may be, shall have authority to review the administrative determination of liquidated damages and to issue a final order affirming such determination; or, if it is found that the sum determined is incorrect or that the contractor or subcontractor violated the provisions of this Act inadvertently notwithstanding the exercise of due care on his part and that of his agents, recommendations may be made to the Secretary that an appropriate adjustment in liquidated damages be made, or that the contractor or subcontractor be relieved of liability for such liquidated damages. The Secretary shall review all pertinent facts in the matter and may conduct such investigations as he deems necessary, so as to affirm or reject the recommendation. The decision of the Secretary shall be final. In all such cases in which a contractor or subcontractor may be aggrieved by a final order for the withholding of liquidated damages as hereinbefore provided, such contractor or subcontractor may, within sixty days after such final order, file a claim in the Court of Claims: Provided, however, That final orders of the agency head, the Commissioners of the District of Columbia or the Secretary, as the case may be, shall be conclusive with respect to findings of fact if such findings are supported by substantial evidence.

(d) Reorganization Plan Numbered 14 of 1950 (15 F.R. 3175; 64 Stat. 1267) shall be applicable with respect to the provisions of this Act, and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, 54 Stat. 1236, 63 Stat. 108; 40 U.S.C. 276c), shall be applicable with respect to those contractors and subcontractors referred to therein who are engaged in the performance of contracts subject to the provisions of this Act.

SEC. 105. The Secretary may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business.

SEC. 106. Any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed in the performance of any work contemplated by any contract to which this Act applies, who shall intentionally violate any provision of this Act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall, upon conviction, be punished by a fine of not to exceed $1,000 or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.

SEC.107.(a) It shall be a condition of each contract which is entered into under legislation subject to Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267), and is for construction, alteration, and/or repair, including painting and decorating, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary by regulation based on proceedings pursuant to section 553 of title 5, United States Code, provided that such proceedings include a hearing of the nature authorized by said section. In formulating such standards, the Secretary shall consult with the Advisory Committee created by subsection (e).

(b) The Secretary is authorized to make such inspections, hold such hearings, issue such orders, and make such decisions based on findings of fact, as are deemed necessary to gain compliance with this section and any health and safety standard promulgated by the Secretary under subsection (a), and for such purposes the Secretary and the United States district courts shall have the authority and jurisdiction provided by sections 4 and 5 of the Act of June 30, 1936 (41 U.S.C.38, 39). In the event that the Secretary of Labor determines noncompliance under the provisions of this section after an opportunity for an adjudicatory hearing by the Secretary of any condition of a contract of a type described in clause (1) or (2) of section 103(a) of this Act, the governmental agency for which the contract work is done shall have the right to cancel the contract, and to enter into other contracts for the completion of the contract work, charging any additional cost to the original contractor. In the event of noncompliance, as determined by the Secretary after an opportunity for an adjudicatory hearing by the Secretary, of any condition of a contract of a type described in clause (3) of section 103(a), the governmental agency by which financial guarantee, assistance, or insurance for the contract work is provided shall have the right to withhold any such assistance attributable to the performance of the contract. Section 104 of this Act shall not apply to the enforcement of this section.

(c) The United States district courts shall have jurisdiction for cause shown, in any actions brought by the Secretary, to enforce compliance with the construction safety and health standard promulgated by the Secretary under subsection (a).

(d) (1) If the Secretary determines on the record after an opportunity for an agency hearing that, by repeated willful or grossly negligent violations of this Act, a contractor or subcontractor has demonstrated that the provisions of subsections (b) and (c) are not effective to protect the safety and health of his employees, the Secretary shall make a finding to that effect and shall, not sooner than thirty days after giving notice of the findings to all interested persons, transmit the name of such contractor or subcontractor to the Comptroller General.

(2) The Comptroller General shall distribute each name so transmitted to him to all agencies of the Government. Unless the Secretary otherwise recommends, no contract subject to this section shall be awarded to such contractor or subcontractor or to any person in which such contractor or subcontractor has a substantial interest until three years have elapsed from the date the name is transmitted to the Comptroller General. If, before the end of such three-year period, the Secretary, after affording interested persons due notice and opportunity for hearing, is satisfied that a contractor or subcontractor whose name he has transmitted to the Comptroller General will thereafter comply

responsibly with the requirements of this section, he shall terminate the application of the preceding sentence to such contractor or subcontractor (and to any person in which the contractor or subcontractor has a substantial interest); and when the Comptroller General is informed of the Secretary's action he shall inform all agencies of the Government thereof.

(3) Any person aggrieved by the Secretary's action under subsections (b) or (d) may, within sixty days after receiving notice thereof, file with the appropriate United States court of appeals a petitition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, who shall thereupon file in the court the record upon which he based his action, as provided in section 2112 of title 28, United States Code. The findings of fact by the Secretary, if supported by substantial evidence, shall be final. The Court shall have power to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, the order of the Secretary or the appropriate Government agency. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(e)(1) The Secretary shall establish in the Department of Labor an Advisory Committee on Construction Safety and Health (hereinafter referred to as the 'Advisory Committee') consisting of nine members appointed, without regard to the civil service laws, by the Secretary. The Secretary shall appoint one such member as Chairman. Three members of the Advisory Committee shall be persons representative of contractors to whom this section applies, three members shall be persons representative of employees primarily in the building trades and construction industry engaged in carrying out contracts to which this section applies, and three public representatives who shall be selected on the basis of their professional and technical competence and experience in the construction health and safety field.

(2) The Advisory Committee shall advise the Secretary in the formulation of construction safety and health standards and other regulations, and with respect to policy matters arising in the administration of this section. The Secretary may appoint such special advisory and technical experts or consultants as may be necessary to carry out the functions of the Advisory Committee.

(3) Members of the Advisory Committee shall, while serving on the business of the Advisory Committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

(f) The Secretary shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe working conditions in employments covered by the Act, and to collect such reports and data and to consult with and advise employers as to the best means of preventing injuries.

Approved August 13, 1962
Amended August 9, 1969.

PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Sec.

3.1 Purpose and scope.
3.2 Definitions.
3.3 Weekly statement with respect to payment of wages.
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3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.
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§ 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with Federally-assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

§ 3.2 Definitions.

As used in the regulations in this part:

(a) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part.

(b) The terms "construction," "prosecution," "completion," or "repair" mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms "public building" or "public work" include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term "building or work financed in whole or in part by loans or grants from the United States" includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is "employed" and receiving "wages," regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term "any affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term "Federal agency" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

§ 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term "employee" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

* (b)(1) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by 29 CFR Parts 3 and 5 during the preceding weekly payroll period.

(2) Each "Statement of Compliance" shall be signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under § 5.5(a)(3)(i) of this Chapter, 29 CFR Part 5 and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in §§ 3.5–3.8;

(iii) That each laborer or mechanic has been paid not less than the wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The willful falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code. *

(c) The requirements of this section shall not apply to any contract of $2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 F.R. 97, Jan. 4, 1964, as amended at 33 F.R. 10186, July 17, 1968]

§ 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under § 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds

(c) Any deduction of amounts required by court process to be paid to another, unless, the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: *Provided, however,* That the following standards are met: (1) The deduction is not otherwise prohibited by law; (2) it is either: (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; (3) no profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and (4) the deductions shall serve the convenience and interest of the employee.

(e) And deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of this title. When such a deduction is made the additional records required under § 516.25(a) of this title shall be kept.

(k) And deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

[29 F.R. 97, Jan. 4, 1964, as amended at 36 F.R. 9770, May 28, 1971]

§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under § 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

§ 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under § 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year.

A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of § 3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of § 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

§ 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of § 3.6; and shall notify the applicant in writing of his decision.

§ 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under § 3.6 are prohibited.

§ 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

§ 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see § 5.5(a) of this subtitle.

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

* **Subpart A—Davis-Bacon and Related Acts Provisions and Procedures**

Sec.

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5.4 [Reserved]
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Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

5.20 Scope and significance of this subpart.
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* **§ 5.1 Purpose and scope.**

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to *coordinate* the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1–7, 46 Stat. 1949, as amended; Pub. L. 74–403, 40 U.S.C. 276a–276a–7).

2. Copeland Act (40 U.S.C. 276c).

3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332).

4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendements of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 328; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

12. The Federal-Aid Highway Acts (72 Stat 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub L. 97–424)

13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205, 25 U.S.C. 450e)

14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5))

16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).

26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).

27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).

30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 498, as amended; 42 U.S.C. 1500c–3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501 Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g))

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 128(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j)

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). Note.—Repealed December 9, 1969, and labor standards incorporated in sec. 1–1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89–694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87–328) (considered a statute for purposes of the plan but not in the United States Code).

60. Energy Security Act (sec. 175(c), Pub. L. 96–294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§ 5.2 Definitions.

(a) The term "Secretary" includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

* (b) The term "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative. *

(c) The term "Federal agency" means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in § 5.1.

(d) The term "Agency Head" means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term "Contracting Officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term "labor standards" as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in § 5.1, and the regulations in Parts 1 and 3 of this subtitle and this part.

(g) The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term "contract" means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards

(i) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms "construction", "prosecution", "completion", or "repair" mean all types of work done on a particular building or work at the site thereof (or, under the United States Housing Act of 1937 and the Housing Act of 1949), all work done in the construction or development of the project, including without limitation, altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937 and the Housing Act of 1949, in the construction or development of the project), by persons employed by the contractor or subcontractor.

(k) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term "site of the work" is defined as follows:

(1) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (l)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site".

(2) Except as provided in paragraph (l)(3) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) Not included in the "site of the work" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work". Such permanent, previously established facilities are not a part of the "site of the work", even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice and trainee are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to "apprentices" and "trainees" employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is "employed" regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term "wages" means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon

Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of § 1.6 of this title.

§§ 5.3–5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(*1*) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(*2*) The classification is utilized in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215–0140.)

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215–0140.)

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of

Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB control number 1215–0140.)

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH–347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029–005–00014–1), U.S. Government Printing Office, Washington, D.C. 20402.The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB control number 1215–0149.)

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(*1*) That the payroll for the payroll period contains the information required to be maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(*2*) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(*3*) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and Trainees*—(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship

program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of Eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of Part 4 of this title. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment

of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day or which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

§ 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in § 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by § 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to § 5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone

other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§ 5.7 Reports to the Secretary of Labor

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101–11.11 and assigned interagency report control number 1482–DOL–SA.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or forty hours in any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of $10 for each calendar day or workweek in which such individual was required or permitted to work without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory or District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the

recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to Part 7 of this title, and the Wage Appeals Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to Part 8 of this title, and the Board of Service Contract Appeals in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

§ 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

§ 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

§ 5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or § 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR Part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Wage Appeals Board within 30 days of the date of the ruling, with a copy thereof to the Administrator. The petition for review shall be filed in accordance with Part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the

Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Wage Appeals Board.

§ 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in § 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in § 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR Part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under § 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in § 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in § 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Wage Appeals Board pursuant to 29 CFR Part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in § 5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to "any firm, corporation, partnership, or association" in which such contractor or subcontractor has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Wage Appeals Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in § 5.1. No particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrative Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(5) *Referral to the Wage Appeals Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Wage Appeals Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 7.

§ 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to Part 1 of this subtitle, of the rules contained in this part and in Parts 1 and 3, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

§ 5.14 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of Parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contracts of $2,000.00 or less.

(2) Purchases and contracts other than construction contracts in the aggregate amount of $2,500.00 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

(3) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam;

Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(4) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(5) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in § 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In order to prevent undue hardship, a workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards, under the following conditions: (i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of 8 hours per day in a standby or on-call status; and (ii) if the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and (iii) provided that, in determining the daily and the weekly overtime requirements of the Act in any particular workweek of any such employee whose established workweek begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of 8 hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(3) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

(4) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of Section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by Section 102 of the Act in accordance with the basic rate of pay as defined in subsection (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.

(A) The employee receives gross wages of not less than $300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract. (Approved by the Office of Management and

Budget under OMB control number 1215–0017.)

§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of § 5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

§ 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

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Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

§ 5.20 Scope and significance of this subpart.

The 1964 amendments (Pub. L. 88–349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in § 5.12.

§ 5.21 [Reserved]

§ 5.22 Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in § 1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of § 1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms "wages", "scale of wages", "wage rates", "minimum wages" and "prevailing wages", as used in the Davis-Bacon Act.

§ 5.23 The statutory provisions.

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

(b) As used in this Act the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include—

(1) The basic hourly rate of pay; and

(2) The amount of—

(A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits * * *.

§ 5.24 The basic hourly rate of pay.

"The basic hourly rate of pay" is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

§ 5.25 Rate of contribution or cost for fringe benefits.

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.

(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See § 5.5(a)1 (i) and (iii).

§ 5.26 "• • • contribution irrevocably made • • • to a trustee or to a third person".

Under the fringe benefits provisions (Section 1(b)(2) of the act) the amount of contributions for fringe benefits must be made to a trustee or to a third person, irrevocably. The "third person" must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan

§ 5.27 "• • • fund, plan, or program".

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase "fund, plan, or program" is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute.

§ 5.28 Unfunded plans.

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

(1) It could be reasonably anticipated to provide benefits described in the act;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)

(c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words "reasonably anticipated" are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be "bona fide" and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by § 5.5(a)(1)(iv).

§ 5.29 Specific fringe benefits.

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefit arrangements of a bona fide nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term "other bona fide fringe benefits" is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area (S. Rep. No. 963, p. 6).

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be "bona fide" (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is "bona fide" in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under § 5.5(a)(1)(iv).

(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are "bona fide" in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under § 5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

§ 5.30 Types of wage determinations.

(a) When fringe benefits are prevail-

ing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

Classes	Basic hourly rates	Fringe benefit payments				
		Health and welfare	Pensions	Vacations	Apprenticeship program	Others
Laborers	$3.25					
Carpenters	4.00	$0.15				
Painters	3.90	.15	$0.10	$0.20		
Electricians	4.85	.10	.15			
Plumbers	4.95	.15	.20		$0.05	
Ironworkers	4.60			.10		

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

§ 5.31 Meeting wage determination obligations.

(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for "bona fide" fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of § 5.30, the obligations for "painters" will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or

(2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for "bona fide" fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for "painters" in the illustration in paragraph (c) of § 5.30 will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributions of not less than a total of 45 cents an hour for "bona fide" fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for "painters" in the illustration in paragraph (c) of § 5.30, by paying directly to the painters a straight time hourly rate of not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in subparagraphs (1) thru (3) of this paragraph. Thus, for example, his obligations for "painters" may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be $4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be $3.75 in cash and 60 cents in payments or costs for fringe benefits.

[30 F.R. 13138, Oct. 15, 1965]

§ 5.32 Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase "contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program" was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics $3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of $3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of $3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in subparagraphs (2) and (3) of this paragraph.

(2) The X construction contractor has for some time been paying $3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of $3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be $3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the $3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in subparagraph 2 of this paragraph, the Y construction contractor who has been paying $3 an hour as his basic cash wage

on which he has been computing overtime compensation reduces the cash wage to $2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as $1 an hour. In this example the regular or basic hourly rate would continue to be $3 an hour. See S. Rep. No. 963, p. 7.

APPENDIX A

STATUTES RELATED TO THE DAVIS-BACON ACT REQUIRING PAYMENT OF WAGES AT RATES PREDETERMINED BY THE SECRETARY OF LABOR

1. The Davis Bacon Act (secs. 1-7, 46 Stat. 1494, as amended, Pub. L. 74-403, 40 U.S.C. 276a-276a-7)

2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended)

3. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f))

4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b))

6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended)

7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433 by Pub. L. 92-318, title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

10. The Federal-Aid Highway Act of 1956 (sec. 108(b), 70 Stat. 378, recodified at 72 Stat. 895; 23 U.S.C. 113(a) as amended; see particularly the amendments in the Federal Aid Highway Act of 1968 (Pub. L. 90-495, 82 Stat. 815).

11. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5)).

14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372)

17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45, 40 U.S.C. 808)

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370 as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256, 42 U.S.C. 293a(e)(7)).

24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).

25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).

28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended, 42 U.S.C. 1459)

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

32. Housing Act of 1961 (sec. 707 added by sec. 967, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

38. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222)

40. Juvenile Delinquency Prevention (sec. 1, 86 Stat. 536, 42 U.S.C. 3884).

41. New Communities Act of 1968 (sec. 410, 82 Stat. 516, 42 U.S.C. 3909).

42. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

45. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19))

46. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001, 42 U.S.C. 6708, also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

47. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168, 42 U.S.C. 6881(h)).

48. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

49. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d))

50. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715, 49 U.S.C. 1609).

51. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

52. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

53. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(i)).

54. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644, 40 U.S.C. 682(b)(4)).

NOTE.—Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1-1431 of the District of Columbia Code).

55. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code)

56. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of the plan but not in the United States Code).

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Handbook **1344.1**

U.S. Department of Housing and Urban Development
Washington, D.C. 20410

Program Participants and Departmental Staff

December, 1983

Federal Labor Standards Compliance in Housing and Community Development Programs

SL: Distribution: W-3-1, W-1, W-2. W-3, W-4, R-1, R-2, R-3, R-3-1, R-3-2, R-3-3 R-6, R-6-1, R-6-2, R-7, R-7-1 R-7-2, R-8, R-8-1, R-9, R-9-1 138-2, 138-7

Special Attention of
HUD Regional Labor Relations Officers
HUD Field Office Labor Relations Staffs
Community Development Block Grant Recipients
Public Housing Authorities
States - CDBG Small Cities Program

Transmittal

Handbook No.: 1344.1

Issued: December 12, 1983

1. This Transmits HUD Handbook 1344.1 Entitled: Federal Labor Standards Compliance in Housing and Community Development Programs.

2. Explanation of Materials Transmitted:

This Handbook describes procedures and policies for the administration and enforcement of labor standards in Federally-assisted or insured construction.

3. Cancellations:

Handbooks 1340.3a (Labor Standards - All Programs) and 6500.3 (Labor Standards Administration and Enforcement: The Community Development Block Grant Program).

4. Significant Changes:

a. Two previously separate HUD handbooks have been combined into one.

b. Incorporates new Department of Labor Regulations (29 CFR Parts 1 and 5 Subpart A, effective June 28, 1983).

c. Provides a newly revised listing of HUD references to programs covered by the Davis-Bacon and Related Acts and contract forms containing labor standards which apply to them.

d. Requires HUD to provide to contractors readable wage determinations with applicable modifications, deleting extraneous and confusing material.

e. Eliminates subcontractor eligibility checks by HUD or local or State agencies. Under the new procedure, ineligibility lists will be used to confirm only prime contractor eligibility. New labor standards contract language incorporates an eligibility certification for subcontractors (as well as prime contractors).

f. Allows for HUD-controlled interest bearing accounts for withheld funds under the Section 8 program. Any interest earned would be paid to either the contractor/owner or workers, whichever prevailed in a disputed situation.

Distribution: W-3-1, W-[illegible], W-[illegible], W-[illegible], W-4, R-1, R-2, R-3, R-3-1, R-3-2, R-3-3, R-6, R-6-1, R-6-2, R-7, R-7-1, R-7-2, R-8, R-8-1, R-9, R-9-1, 138-2, 138-7

g. All Davis-Bacon debarment recommendations will be referred to the Department of Labor for its action.

h. All disputes between contractors and HUD or HUD agents involving labor standards matters which cannot be resolved at the Field Office level will be referred through HUD to the Department of Labor for its resolution.

i. Where labor standards violations have taken place, requires written notice to the prime contractor prior to the withholding of amounts of money due under the contract. Written notice is also provided to the prime contractor prior to any disbursal of such withheld funds.

j. Clarifies procedures for the assessment of liquidated damages under the Contract Work Hours and Safety Standards Act. Provides for notification to prime contractor of computation and intent to assess liquidated damages as well as right to seek a waiver of reduction of such liquidated damages.

k. Clarifies procedures for withholding and suspension of insured draws and advances.

l. Provides guidelines on the conduct of labor standards investigations.

m. Provides a chapter on various interpretations and applications of the Davis-Bacon and Related Acts.

n. Provides a chapter on various interpretations and applications of the Contract Work Hours and Safety Standards Act.

o. Provides a delineation of State responsibilities for labor standards administration and enforcement in the CDBG program.

p. Eliminates four contractor/subcontractor labor standards certification forms.

q. Provides one new deposit agreement for insured programs (where previously there were three).

r. Streamlines the process of making wage restitution payments to workers and refunds to contractors.

s. Provides new instructions for summer youth employment on Davis-Bacon covered work.

Acting Assistant to the Secretary
for Labor Relations

FOREWORD

This Handbook describes policies and procedures for public housing agencies, local and State housing and community development agencies, and HUD personnel in implementing statutory and regulatory requirements for construction labor standards compliance in HUD housing and community development programs. The enforcement program described in this Handbook should be effective in preventing labor standards violations and minimizing the impact of those which do occur. The Handbook has been designed to keep paperwork and reports to a minimum while affording maximum statutory protection.

Effective labor standards compliance depends upon cooperation and responsiveness by all parties concerned. In several program areas, for example, low rent public housing and the Community Development Block Grant programs, HUD has delegated to local and State agencies certain ministerial responsibilities to enforce labor standards. HUD at the same time, however, retains overall responsibility for ensuring that local and State agencies properly carry out their enforcement responsibilities. HUD provides as needed administrative, investigative, and technical support to such agencies as part of this responsibility.

Any questions concerning this Handbook shall be referred to the appropriate HUD Field Office Labor Relations Staff. Questions which cannot be resolved at the Field Office level shall be referred to the HUD Office of the Assistant to the Secretary for Labor Relations in Washington. For questions on the State Small Cities CDBG Program, referral shall be made to the respective State and then to the appropriate HUD Field Office, if necessary.

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2. Title 29 Code of Federal Regulations Part 5
3. SF-308 Request for Determination and Response to Request
4. Publication WH-1321 Notice to Employees
5. WH-347 Payroll (Optional)
6. WH-348 Statement of Compliance
7. HUD - 11 Record of Employee Interview
8. Deposit Agreement
9. Procedure for Comptroller General Disbursal of Wage Restitution (Property Disposition)

HUD LABOR RELATIONS FORMS REQUIRING OMB APPROVAL

HUD Form	OMB Number
SF-308 - Request for Determination and Response to Request	2501 - 0005
WH-347 - Payroll (Optional)	2501 - 0007
WH-348 - Statement of Compliance	2501 - 0007
HUD-11 - Record of Employee Interview	2501 - 0009

CHAPTER 1. GENERAL INFORMATION

1-1 PURPOSE AND SCOPE. This Handbook describes policies and procedures and assigns responsibilities for the administration and enforcement of statutory and regulatory labor standards requirements on HUD-insured or assisted construction. The Handbook has been prepared for use by local and State agencies as well as HUD personnel. Because there are statutory and regulatory labor standards variations among the different housing and community development programs covered in this Handbook, relevant exceptions in procedures are noted. Close adherence to the procedures will ensure a minimal number of enforcement problems and violations and safeguard statutory rights, expedite construction, and conserve investigative staff resources. HUD Field Office Labor Relations Staff technical assistance to local and State grantees and agencies will ensure competent and efficient labor standards compliance.

1-2 PROGRAMS COVERED. This Handbook covers the following programs:

a. Low Rent Public Housing (24 CFR Part 841)
b. Indian Housing (24 CFR Part 805)
c. Comprehensive Improvement Assistance Program (24 CFR Part 868)
d. Section 8 New Construction (24 CFR Part 880)
e. Section 8 Substantial Rehabilitation (24 CFR Part 881)
f. Section 8 Moderate Rehabilitation (24 CFR Part 882)
g. Section 8 New Construction, Substantial Rehabilitation State Agency (24 CFR Part 883 - Subparts A through D)
h. Section 8 Farmers Home Administration (24 CFR Part 884)
i. Section 8 Assistance for the Disposition of HUD-owned projects (24 CFR Part 886 - Subpart C)
j. Section 202 (24 CFR Part 885)
k. Community Development Block Grants (24 CFR Part 570)
l. Urban Development Action Grants (24 CFR Part 576)
m. Section 312 (24 CFR Part 510)
n. National Housing Act - Sections 207, 213, 220, 221(d)(3) and (4), 221(h)(1), 231, 232, 233, 234d, 235(j)(1), 236, 241, 242, Title X, Title XI (24 CFR various Parts)
o. Property Disposition (24 CFR Part 886)
p. Housing and Community Development Act of 1974 (Section 108 - Loan Guarantees)
q. Rental Rehabilitation and Redevelopment Grants (Section 17 of U. S. Housing Act of 1937)

Refer to Exhibit 1 for specific coverage information and exceptions and HUD labor standards contract documents which apply.

1-3 STATUTORY PROVISIONS.

a. Davis-Bacon Act (40 U.S.C. 276a - 276a-5). The Davis-Bacon Act (DBA) provides that contracts in excess of $2,000 to which the United States is party for the construction, alteration, and/or repair, including painting and decorating, of public buildings or public works, which involve the employment of laborers and/or mechanics shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions. HUD construction covered by the DBA itself consists of Secretary-acquired properties where repairs or improvements are being made under a construction contract between HUD and the contractor. Those Davis-Bacon provisions which are contained in HUD-assisted construction programs are known as "Related Acts" and will be referred to as DBRA in this Handbook. A number of the "Related Acts" contain different Davis-Bacon application thresholds based on the numbers of units assisted. Those differences are covered in Exhibit 1.

b. Contract Work Hours and Safety Standards Act (40 U.S.C. 327 - 333). This Act (CWHSSA) applies to both direct Federal contracts and indirect Federally-assisted contracts except where the assistance is solely in the nature of a loan guarantee or insurance (See Paragraph 8-2). CWHSSA also applies to maintenance laborers and mechanics employed by public housing authorities. CWHSSA provides that work in excess of 8 hours per day or 40 hours per week shall be compensated for at rates not less than one and one-half times the basic rate of pay. The Act mandates that all contracts requiring the employment of laborers and mechanics (and watchmen and guards) in the performance of work in connection with such projects contain implementing provisions which will render the contractor and any subcontractor responsible for violation liable to the affected employees for their unpaid wages and to the United States for liquidated damages. The Act establishes an appeals procedure and makes intentional violations of the Act a Federal criminal misdemeanor.

c. Copeland Act (Anti-Kickback Act) (40 U.S.C. 276c).The Copeland Act makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the

United States, to give up any part of the compensation to which he is entitled under his contract of employment. The Act also provides for the submission of weekly statements of compliance and weekly payrolls by all contractors in a format which meets the requirements of 29 CFR Section 5.5. (See Exhibits 5 and 6 in the Appendix).

d. The Fair Labor Standards Act (FLSA) (29 U.S.C. 102 et seq.) is applicable to HUD-assisted construction and provides for minimum wages for construction workers, overtime pay (forty-hour work week), recordkeeping and child labor standards. The Department of Labor is responsible for the enforcement of the Fair Labor Standards Act. It is the responsibility of the contractor to request rulings from the Department of Labor relative to the applicability of FLSA and limitations on child labor.

1-4 REGULATORY PROVISIONS. HUD and any local or State agencies which are responsible for the performance of labor standards administration and enforcement activities delegated by HUD are governed by the regulations promulgated by the Secretary of Labor and contained in Title 29 of the Code of Federal Regulations (CFR) Parts 1, 3, 5, and 7. The Department of Labor's role in coordinating government-wide administration and enforcement activities in the Federal labor standards area is authorized by Reorganization Plan Number 14 of 1950. The actual enforcement of labor standards, however, including project investigations and the performance of routine project compliance monitoring remains the overall responsibility of HUD. HUD has delegated certain of the day-to-day enforcement responsibilities to local or State agencies which directly administer HUD-assisted programs. Where such delegations have been made, they are set forth in the paragraphs which follow. HUD handles all other labor standards enforcement obligations directly.

1-5 HUD RESPONSIBILITIES. This Handbook delegates certain labor standards responsibilities to local and State agencies (See Paragraph 1-6). For those program activities, HUD ensures through the provision of training, technical assistance, and investigatory resources as well as through the conduct of compliance reviews and monitoring that local and State agencies are effectively performing their responsibilities. For all other program activities, HUD field staff directly administer and enforce labor standards. HUD Field Office Labor Relations Staff shall:

a. Assist and provide technical assistance to local and State agencies.

b. Conduct comprehensive labor standards compliance reviews of local or State agencies and grantees. (See Chapter 9)

c. Perform investigations of complaints and other labor standards matters. (See Chapter 4)

d. Provide all labor standards technical and support functions to HUD program areas.

e. Make recommendations regarding debarment for labor standards violations.

The HUD Field Office Labor Relations Staff shall be responsible for performing the above functions except where the Labor Relations functions have been regionalized (Boston, Atlanta, Kansas City, Denver, and Seattle) where Regional Labor Relations staff will perform such functions. This Handbook will refer to HUD Field Office Labor Relations Staffs whenever specific Labor Relations responsibilities are described for ease of reference.

1-6 LOCAL OR STATE AGENCIES RESPONSIBILITIES.

Compliance with labor standards provisions on the part of local or State agencies is a condition for receipt of HUD assistance. Accordingly, each such agency is responsible to HUD for ensuring compliance with Federal labor standards requirements as follows:

a. Designating appropriate staff before the start of construction to ensure compliance with all applicable labor standards requirements and to act for and in liaison with HUD. The name(s) of staff must be provided to the appropriate HUD Field Office Labor Relations Staff.

b. Establishing a construction contract management system which meets the standards of OMB Circular A-102, Attachment O (Excepting State CDBG program).

c. Informing in preconstruction conferences all contractors and subcontractors performing contract construction work of their labor standards obligations.

d. Ensuring that all bid documents, contracts, and subcontracts contain Federal labor standards provisions and the applicable Department of Labor wage determination and that no contractor is ineligible for Federally-assisted work.

e. Conducting on-site project inspections which include employee interviews and checking for posting of the Federal wage determination as well as the review of weekly contractor payrolls.

f. Correcting all violations of labor standards promptly.

g. Maintaining full documentation attesting to all administrative and enforcement activities with respect to Federal labor standards requirements, such documentation to be made freely available for HUD review. Such documentation shall include all weekly payrolls, copies of wage determinations and any applicable changes or modifications, notices of start of construction, on-site inspection reports and employee interviews, and any other records utilized in enforcement administration - including records of wage restitution made and preconstruction conference minutes.

h. Complying with requirements imposed by HUD concerning special requirements of law, program requirements, and other administrative requirements.

1-7 EQUAL EMPLOYMENT OPPORTUNITY. The utilization by contractors of all apprentices, trainees, and journeymen on construction work covered by the Davis-Bacon and Related Acts shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30. While these requirements are enforced by the Department of Labor, both HUD and local or State agency staffs, where appropriate, shall review such requirements at preconstructon conferences.

CHAPTER 2 LABOR STANDARDS ADMINISTRATION: PRECONSTRUCTION PHASE

2-1 LABOR STANDARDS REQUIREMENTS - PRECONSTRUCTION PHASE. A construction project covered by Federal labor standards requires a series of specific actions by contract administrators or labor standards personnel prior to the actual start of construction. Those actions are:

a. obtaining an applicable wage determination for the project;
b. including that wage determination (and any modifications) in the bid documents (where there is competitive bidding) or in invitations for proposals (Public Housing "Turnkey", Section 202/8 and 202 generally);
c. including appropriate labor standards provisions and the wage determination in the construction contract;
d. holding a preconstruction conference to explain labor standards;
e. checking the prime contractor for eligibility status;
f. adding any job classifications needed but not listed in the wage determination.

SECTION 1. WAGE DETERMINATIONS

2-2 CONSTRUCTION WAGE DETERMINATION - DEFINITION. All construction bid documents and contracts or analogous instruments covered by Federal labor standards must contain a current and applicable wage determination issued by the Department of Labor. The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision.

2-3 OBTAINING WAGE DETERMINATIONS - PROJECT DETERMINATIONS. Project wage determinations are obtained through the submission of Standard Form SF-308 to the Department of Labor (DOL) at this address:

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Branch of Construction Contract Wage Determination
Washington, D.C. 20210

Local or State agencies will prepare an SF-308 (See Exhibit 3) and submit it to the appropriate HUD Field Office Labor Relations Staff. The latter will review the form for accuracy and completeness and mail it to Department of Labor. A full description of the work to be performed must be provided on the SF-308. Only those classifications needed for the work

should be checked. The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. At least 30 working days shall be anticipated for the processing. HUD encourages the voluntary submission by local or State agencies of any wage rate data which may be of use to the Department of Labor in the wage determination process. Where States are administering the CDBG program, States will send the SF-308 directly to the Department of Labor.

2-4 OBTAINING GENERAL WAGE DETERMINATIONS. Where wage patterns in a particular type of construction are settled and whenever a large volume of procurement in that area for such a type of construction may occur, the Department of Labor may publish a general wage determinaton in the Federal Register. Such decisions may be used without notifying the Department of Labor. Department of Labor general wage determinations will be provided to local or State agencies by HUD upon the submission of an SF-308 to the HUD Field Office Labor Relations Staff. Copies of all SF-308s and resultant wage determinations will be maintained by the HUD Field Office Labor Relations Staff in appropriate project files. States administering the CDBG program may utilize the Federal Register without dealing with the HUD Field Office Labor Relations Staffs.

2-5 USE AND EFFECTIVENESS OF WAGE DETERMINATIONS AND EXTENSION OF EXPIRATION DATES

a. Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If an effective wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an Agreement to Enter into a Housing Assistance Payments Contract under Section 8 of the U. S. Housing Act of 1937, and the start of construction) HUD or the local or State agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an Agreement to Enter into a Housing Assistance Payments Contract under Section 8 of the U. S.Housing Act of 1937), HUD may request DOL to extend the expiration date of the wage determination instead of

issuing a new wage determination. Such a request shall be supported by a written finding, which shall include a brief statement that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Department Of Labor will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Department of Labor will proceed to issue a new wage determination which will be applicable to the project.

b. General wage determinations which are published in the Federal Register contain no expiration date. General wage determinations may be modified to keep them current.

c. Project wage determinations may be modified to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. All actions modifying a project wage determination received by the local or State agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(1) For contracts entered into pursuant to competitive bidding procedures, modifications received by the local or State agency less than ten days before the opening of bids shall be effective unless the local or State agency finds that there is not a reasonable time available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. No such report shall be required if the modification is received after bid opening.

(2) For projects assisted under the National Housing Act, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first. If construction starts (with HUD approval) prior to initial endorsement for insurance, modifications to project wage determinations shall not be effective if issued after construction starts. Initial endorsement or start of construction, whichever occurs first, will serve to "lock in" the wage determination.

(3) For projects receiving housing assistance payments under Section 8 of the U.S. Housing Act of 1937, modifications shall be effective if received prior to the beginning of construction or the date the Agreement to Enter into a Housing Assistance Payments Contract is executed, whichever occurs first.

d. All actions modifying a general wage determination shall be effective for any project to which the determination applies, if published before contract award (or the start of construction where there is no contract award), except as follows:

(1) In the case of contracts entered into pursuant to competitive bidding procedures, modifications published less than ten days before the opening of bids shall be effective unless HUD finds that there is not a reasonable time available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Department of Labor upon request. No such report shall be required if the modification is published after bid opening.

(2) For projects assisted under the National Housing Act, modifications shall be effective if published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(3) For projects to receive housing assistance payments under Section 8 of the Housing Act of 1937, modifications shall be effective if published prior to the beginning of construction or the date the Agreement to Enter into a Housing Assistance Payments Contract is executed, whichever occurs first.

A modification to a general wage determination is "published" within the meaning of this section on the date of publication in the Federal Register, or on the date the agency receives actual written notice of modification from the Department of Labor, whichever occurs first. The Labor Relations Staff is responsible for advising program participants promptly of modifications that are published in the Federal Register.

e. If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is approved prior to contract award (or the beginning of construction where there is no contract award), HUD shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under Section 8 of the U. S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactive to that date, provided, that upon the request of the head of the agency in individual cases the Department of Labor may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship.

f. If the contract has not been awarded within 90 days after bid opening, or if construction has not begun within 90 days after initial endorsement or the signing of the Agreement to Enter into a Housing Assistance Payments Contract, any modifications published in the Federal Register prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. Extension requests shall be submitted by the HUD Field Office Labor Relations staff to Headquarters Labor Relations for transmittal to the Department of Labor. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

2-6 ADDITIONAL CLASSIFICATIONS. If, after the receipt of a wage determination, it is found that any class of laborers or mechanics which is not listed in the wage determination is to be employed, a request that such laborer or mechanic be classified in conformance to the wage determination must be made. The local or State contract administrator or labor standards designee shall make the request to the appropriate

HUD Field Office Labor Relations Staff which will, after consideration of all wage data and supporting evidence available, conform a classification and rate. The State CDBG agency similarly will conform a classification and rate in that program upon receiving a request from a recipient. A report of the conformance action taken shall be sent by the HUD Field Office Labor Relations Staff or the State CDBG agency to the Department of Labor (OMB 1215-0140). The Department of Labor reserves final judgment for such decisions and will advise HUD (or the State) as to the acceptability of such reports within 30 working days. The following guidelines shall be used in approving additional classifications and rates and in preparing the report for the Department of Labor:

- The work to be performed by the classification requested is not performed by a classification in the wage determination; and

- The classification is utilized in the area by the construction industry; and

- The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

There are several commonly found classifications which are typically added through the additional classification process. Landscape laborers, insulators, and carpet layers are examples of such classifications.

2-7 INCLUSION OF WAGE DETERMINATIONS AND LABOR STANDARDS PROVISIONS IN CONTRACTS AND SUBCONTRACTS AND IN BID DOCUMENTS. The applicable wage determination, any modifications and any additional classifications must be made a part of the bid documents (if any) or invitations for proposals and every subsequent contract and subcontract for construction work on the project. The wage rates contained therein shall be the minimum wage rates to be paid under such contracts by contractors and subcontractors on the job. The Federal Labor Standards Provisions must also be included in all contracts, subcontracts, and any lower-tier subcontracts and in the bid documents. Inclusion by reference is unacceptable. It is the prime contractor's responsibility to ensure inclusion of wage rates and labor standards provisions in all subcontracts. HUD contract forms which contain the appropriate labor standards provisions for the different programs are cited in Exhibit 1.

The HUD Field Office Labor Relations Staff shall ensure that all wage determinations provided for bid documents, invitations for proposals, contracts, and posting are readable and include only rates pertinent to the project (extraneous modifications should be deleted to avoid confusion).

a. Failure to Include Wage Determinations. The failure to include the required wage determination and appropriate labor standards provisions in bid documents or contracts will not relieve local or state agencies or contractors from potential liabilities for enforcement actions. Any failure to include a wage determination must be rectified. The Department of Labor may issue a wage determination after contract award or after the beginning of construction if the agency has failed to include a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms clearly does not apply to the contract.

b. Use of Wrong Determination. The Department of Labor may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction if the wrong wage determination has been included in the contract because the agency has inaccurately described the project or its location in its request for a wage determination. The agency shall either terminate and resolicit the contract with the valid wage determination, or shall make the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order and shall compensate the contractor for any increases in wages resulting from such change. The method used in implementating the valid wage determination and adjustment in contract price, where appropriate, should be in accordance with applicable contract law. Where an error (clerical) was made in a published area or issued project wage determination, the Department of Labor will issue a letter of inadvertence. Corrections shall be included in any bid documents or in any on-going contract retroactively to the start of construction.

2-8 POSTING OF WAGE DETERMINATION. A copy of the applicable wage decision and any additional classifications shall be posted by the contractor at the site of work in a prominent place readily accessible to the workers. Publication WH-1321 Notice to Employees (See Exhibit 4) will also be posted with the name and telephone number of the local or State agency compliance designee or HUD Field Office Labor Relations Staff, whichever is appropriate.

SECTION 2 OTHER REQUIREMENTS

2-9 VERIFICATION OF CONTRACTOR ELIGIBILITY AND TERMINATION OF INELIGIBLE CONTRACTORS.

a. By the insertion of certification of eligibility clauses in all contracts and subcontracts, the prime contractor and all subcontractors state that they are eligible for award of a Federally-assisted or insured contract. The local or State agency shall verify that all prime contractors are eligible prior to contract award by reviewing the current HUD List of Debarred, Suspended, or Ineligible Participants, and the General Services Administration's Consolidated List of Debarred, Suspended, and Ineligible Contractors. These lists will be supplied by HUD and kept current. HUD Field Office Labor Relations Staff will similarly verify prime contractor eligibility for contracts being directly administered by HUD. In both cases, prime contractors shall be informed in preconstruction conferences that it is their responsibility to employ only eligible subcontractors who have certified eligibility in written contracts containing Federal Labor Standards Provisions.

b. Should any subcontractor be found ineligible after award of a contract, its contract shall be terminated and the matter referred to the Department of Labor for its action.

2-10 USE OF APPRENTICES AND TRAINEES. The following requirements are excerpted from 29 CFR Section 5.5 for emphasis. The full range of requirements may be found in Exhibit 2.

a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the

Bureau or if a person is employed in his/her first 90 days of probationary employment as an apprentice, who is not individually registered in the program but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(1) The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his/her entire work force under the registered program.

(2) Any worker listed on a payroll at an apprentice wage rate, who is not a trainee as defined in (b) below or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed.

(3) The contractor or subcontractor may be required to furnish to the labor standards compliance person or a representative of the Wage-Hour Division of the U. S. Department of Labor written evidence of the registration of his/her program.

(4) The wage rate paid apprentices shall be not less than the specified rate in the registered program for the apprentice's level of progress expressed as a percentage of the journeymen's rate contained in the applicable wage determination.

b. Trainees. Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration.

(1) The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Employment and Training Administration.

(2) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress.

(3) The contractor or subcontractor may be required to furnish the labor standards compliance person or a representative of the Wage-Hour Division of the U. S. Department of Labor written evidence of the certification of his/her program the registration of the trainees and the ratios and wage rates prescribed in that program.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2-11 PRECONSTRUCTION CONFERENCE. The local or State agency or HUD, whichever is directly administering the construction contract shall hold a conference with the principal contractor and all available subcontractors prior to the start of construction at which time all shall be advised of their responsibilities and obligations regarding the labor standards provisions and the wage determination contained in the contract documents. Pertinent data as to the items discussed and attendees shall be documented. A report or copy of the minutes shall be prepared and retained in the agency's files on each preconstruction conference. The report or minutes will contain:

a. Project name, location and description, wage determination number
b. Name of contractor
c. Contract amount
d. Date and place of conference
e. Conference attendees
f. Summary of items covered

A guide entitled "Conducting Preconstruction Conferences" has been made available to all HUD Field Offices. These guides are designed particularly to assist local and State agencies in explaining labor standards to contractors in preconstruction conferences.

2-12 WEEKLY PAYROLLS. Each contractor and subcontractor and any lower-tier subcontractor shall submit (through the prime contractor) to the local or State agency or HUD, whichever is

directly administering the construction contract, weekly payrolls (See Exhibit 5) for each work week from the time work is started on the project until it is completed. If no work is performed on the project during a given work week, weekly payrolls need not be submitted. Weekly payrolls shall be numbered sequentially and the final payrolls marked "Final." Weekly payrolls shall be completed and submitted promptly preferably no later than seven work days following completion of the work week.

2-13 CONTRACTOR'S PREVAILING WAGE CERTIFICATE - HUD INSURED HOUSING PROGRAMS. Contractors must submit as a condition precedent to insurance by the Federal Housing Administration of an advance or draw FHA Form No. 2403-A, Contractor's Prevailing Wage Certificate.

2-14 START OF CONSTRUCTION - LABOR STANDARDS ENFORCEMENT FILE AND NOTIFICATION TO HUD. A "labor standards enforcement file" shall be established prior to construction for each construction project undertaken by a local or State agency or HUD, whichever is directly administering the construction contract, subject to the applicable labor standards provisions. Such file(s) are to be maintained by the appropriate staff designated by the local or State agency in accordance with paragraph 1-6. The applicable wage determination, including effective modifications and additions, copies of correspondence, preconstruction conference report, memoranda, weekly payrolls, and forms relating to the administration and enforcement of labor standards provisions shall be kept in such files. Notice of "start of construction" for any covered project and contract award date shall be sent by the local or State agency (except the State CDBG program) to the appropriate HUD Field Office Labor Relations Staff and shall include information as to project name and location and the number of the applicable wage decision. "Start of construction" means the beginning of initial site clearance and preparation, provided those activities are pursued diligently and are followed without appreciable delay by other construction activities. The Field Office Labor Relations Staff will maintain counterpart files of local or State agency projects as well as full enforcement files on projects administered directly by HUD.

CHAPTER 3 LABOR STANDARDS COMPLIANCE AND ENFORCEMENT PROGRAM: CONSTRUCTION PHASE

3-1 INTRODUCTION

a. Compliance. There are several important aspects of an effective labor standards compliance program. Preventive measures which can be undertaken prior to the start of construction reduce the commission of violations after construction begins. The preconstruction conference (See paragraph 2-11) should address all questions related to the labor standards provisions and the applicable wage decision posed by contractors and subcontractors. Where confusion or misunderstanding is allowed to exist, serious contract violations may result in fraud, waste, and mismanagement of Federal funds.

b. Enforcement. The enforcement procedures set forth in the following paragraphs stress prevention in order to minimize the seriousness and scope of potential violations and abuses and to avoid possible project disruption. They are comprised of two basic elements: (1) job-site inspections, including on-site job interviews of workers and (2) the review of contractor payrolls and other basic records, especially in the context of specific information developed by the job-site inspections.

SECTION 1 ON-SITE INSPECTION

3-2 JOB INSPECTIONS. The project inspector should understand that the enforcement of labor standards provisions is as important as other requirements of the contract specifications, and that failure to comply with such labor standards must be corrected by contractors and subcontractors. In addition, failure to comply may result in the imposition of serious sanctions and penalties. The project inspector should know that maintaining compliance during the course of construction will save time, trouble, and expense to both the contractor and the local or State agency involved or HUD, as well as serve the interest of the public in the enforcement of these statutory provisions.

a. Posting. The project inspector should assure that the wage determination and other required material are posted by the contractor at the site of the work in a prominent

and accessible place where they can be easily read by the workers. A poster (WH-1321) shall also be conspicuously displayed which informs employees of their rights (Exhibit 4) and indicates that complaints will be received by the project inspector. This also serves to put the subcontractors on additional notice of labor standards provisions. For a project covering large areas these posters shall be placed at several locations.

b. Employee Interviews. Employee interviews must be sufficient to establish the degree of compliance and to indicate the nature and extent of violations, if any. They must also be representative of all classifications of employees on the project. Employees shall be encouraged to produce pay stubs or pay envelopes which document the wages received. The employee shall be informed that the information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission, and that he/she is being interviewed by an employee of the local or State agency or HUD on a project assisted by the U.S. Department of Housing and Urban Development. Disclosure of employee statements are governed by the provisions of the Freedom of Information Act and the Privacy Act of 1974.

(1) Place of Interview. Employees currently employed may be interviewed during working hours on the job, provided that the interview can be properly and privately conducted on the premises. In cases of possible falsification of records, fear of reprisals, or intimidation, it may be more advisable to conduct the interview elsewhere, such as in the employee's home, at the agency's office, or another suitable place.

(2) Initiating the Interview. The local or State inspector or HUD official shall begin the interview by identifying himself/herself to the worker. He/she shall confirm identity by showing the worker his/her credentials. He/she shall explain that the project is being constructed with the assistance of the Federal Government, that the payment of prevailing wages on Federally-assisted construction projects is required by law, and that the purpose of the interview is to obtain information for use in determining whether the required wages are being paid. He/she shall inform the worker of the

specific location at which the applicable wage determination decision is posted at the project site.

(3) Mail Interviews. Employees and former employees may be interviewed by mail.

(4) Interview Time. If the interview is conducted on the job site it shall be arranged causing the least inconvenience to the employer and employee.

(5) Oral Interview Statements. An employee interview need not be recorded in a signed statement when it serves merely to confirm what the records reveal, and is not otherwise indicative of a violation, assuming no violation has been alleged and the records are adequate. For compliance review purposes, however, the number of such interviews should be recorded.

(6) Interview Form. Employee interviews may be recorded on Form HUD-11, Record of Employee Interview (See Exhibit 7). This form has been prepared as a convenient format for recording interviews. The following describes the HUD-11 and provides guidance in completing it:

(a) Project Number. Include the number of the project. Include project name.

(b) Contractor or Employer. Enter the name of the contractor or employer.

(c) Employee's Name. Enter the employee's full name. Note any name variation entered on the payrolls if known to the employee, to facilitate comparison of the interview statement with the payroll entries (if necessary).

(d) Permanent Mail Address. Many construction workers have only a temporary address in the locality of the project and a more permanent address elsewhere from which mail may be forwarded to them. It is desirable to have a record of the more permanent address in case there is occasion to contact the worker after he/she leaves the job. If the worker does not

want to give such an address, the inspector should not insist.

(e) Last date worked on project before today (day of interview) and number of hours on project on that date. The inspector shall make it clear to the worker that these items relate only to project work, not to other work. As a check on the number of hours worked on the project, the inspector should ask the worker the time he/she started work on the project on the day in question, the time he/she stopped, and the time out for lunch. It is not necessary to record these details, but the questions may help the worker to remember the number of hours worked.

(f) Hourly Rate of Pay. The inspector should determine what the worker is being paid. Do not be concerned if the worker is being paid a higher rate, but if the hourly rate of pay stated by the worker is lower than the required rate, the construction inspector should immediately question the worker further in an effort to determine whether the worker is mistaken or is really being underpaid. For example, has the worker actually received at least one wage payment for work performed on project, or is his/her statement based on the rate received for other work? If the latter, the inspector should ask the worker to check his/her next pay to determine his/her rate of pay for work on the project. The inspector should either arrange to reinterview the worker during the following week or ask the worker to mail the information. If the worker states that he/she received wages less than the required rate, the inspector shall obtain substantiating evidence from the worker. Does the worker receive pay envelopes, pay slips, pay check stubs, or any other forms which show the hourly wage rate or hours worked and earnings? Does he/she have any available? If not, will he/she bring them if the inspector arranges to reinterview? Or will they be mailed to the inspector?

(g) Classification. The worker may not be familiar with the classifications used on the wage determination and thus may use a descriptive term which may not be found on the determination e.g. Rodman. Further questioning will probably elicit the information that he/she installs reinforcing bars and, depending on the area and wage determination, the worker will agree that his/her work is that of an ironworker reinforcing or a laborer. The correct title may then be entered on the form.

(h) Duties and Tools Used. If the classification stated by the worker is included in the applicable wage determination decision and the hourly rate of pay stated by the worker equals or exceeds the rate required by the decision, and the worker agrees that he/she is performing the duties of and using the tools of the stated classification the inspector may enter the word "trade" across both items to signify duties and tools of the trade. On the other hand, if there are any discrepancies in or doubts about any of the foregoing, the worker's statements of duties performed and tools used should be entered in detail. Detailed statements are required in all interviews with employees classified as apprentices or trainees. Their status will be in doubt until records have been checked to determine whether the alleged apprentice or trainee is individually registered in an approved apprenticeship or trainee program. If the finding is negative, the information regarding duties performed and tools used will be necessary for a determination of the correct classification and wage rate for the worker who was misclassified as an apprentice or trainee. See Paragraph 7-1 (e) for further guidance on resolving classification questions.

(i) Inspector's Comments. The inspector shall report any discrepancies or questionable items encountered in the interview. Examples:

- The inspector shall observe the duties performed and the tools used by the worker

and shall report any conflict between his/her observations and worker's statements regarding the duties and tools.

- If the classification stated by the worker does not appear to be correct classification for the work performed, the inspector shall state the classification which, in his/her opinion is applicable.

- If the hourly rate of pay stated by the worker does not equal or exceed the rate required by the applicable wage determination decision, the inspector's comments shall direct attention to that fact.

- If there are no discrepancies or questionable items and the inspector finds no need for comments, he/she shall write the word "None" in the space provided for his comments.

- The inspector shall not notify the contractor of any discrepancies or questionable items disclosed by the employee wage interviews. The inspector should forward the interview records to the payroll examiner. Wage underpayments may then be calculated once it has been determined that workers have been underpaid.

(j) Inspector's Signature. Self-explanatory.

(k) Date of Interview. The exact date that the worker is interviewed shall be entered. Ordinarily, interviews are made during working hours on the job and it is natural, therefore, for the payroll for the date of the interview to be checked.

(l) Payroll Examiner's Comments. The payroll examiner shall check the information of the interview form against the applicable wage determination and applicable payroll, and

shall record any discrepancies or questionable items not previously reported by the inspector. Appropriate action shall then be initiated to clear discrepancies and questionable items, those noted both by inspectors and by the payroll examiner. When the necessary action has been completed, the results thereof shall be noted on the interview form. If no discrepancies or questionable items were reported by the inspector, the payroll examiner finds none, and finds no need for comments, he/she shall write the word "None" in the space provided for comments.

(m) Payroll Examiner's Signature and Data. The examiner shall sign and date the interview form at the conclusion of the payroll review process.

SECTION 2 WEEKLY PAYROLL REVIEW

3-3 WEEKLY PAYROLL REVIEW. Contractor weekly payrolls and other basic records should be reviewed during routine compliance enforcement activity on every construction project. Submitted payrolls shall be examined to assure compliance with labor standards. In examining payrolls, see that only classifications appearing on the wage determination are used and check for disproportionate employment of laborers, helpers, apprentices or trainees. Such payrolls and statements shall be produced at the request of the Secretary of Labor at any time during the normal three year term in which records must be maintained.

a. Payroll Forms. Contractors shall be urged to use the optional Department of Labor Optional Form WH-347, Payroll (Exhibit 5). The text of the "weekly statement with respect to the payment of wages," which is required by regulations of the Secretary of Labor, appears on the reverse side of this payroll form. A contractor may use an appropriate payroll form of his/her own choice but must report all required items of information and must also submit a copy of the weekly statement, using either Department of Labor Form WH-348, Statement of Compliance (Exhibit 6), which contains the weekly statement and related instructions, or any form containing the identical wording contained in Optional Form WH-347 and WH-348. These forms are available from the

Superintendent of Documents, U. S. Government Printing Office. These forms may also be reproduced.

b. Fringe Benefits. The required weekly statement of compliance, Form WH-348, includes statements concerning the payment of fringe benefits in addition to statements concerning the payment of the basic hourly wage rates.

c. Payrolls Must Be Obtained and Examined Promptly - Payroll Retention. The local or State agency contract or labor standards compliance person or HUD, whichever is administering the construction contract, shall insist upon prompt preferably within seven work days submission of all payrolls. The payrolls shall be examined upon receipt so that any necessary corrective action may be initiated before the problem multiplies, and may be accomplished while the workers are still available. Special attention should be given each project by the compliance officer during the early stages of construction in order to determine whether the principal contractor is meeting his/her responsibilities regarding payrolls. Spot checking of payrolls is permissible after the initial review of four to five weeks of payrolls indicates no significant problems. Payrolls must be retained for three years by the local or state agency or HUD, whichever is applicable, following completion of the project and then may be destroyed unless an investigation, disputed compliance action, or appeal remains outstanding. Clearance shall be obtained from the HUD Field Office Labor Relations Staff prior to such destruction. Contractors and subcontractors must retain their basic payroll records (payroll register, individual earning cards, etc.) for the same three (3) year period.

d. Addresses and Social Security Numbers. Each worker's address and social security number must be reported for each worker on the first payroll on which his/her name appears. It is permissible for the contractor to omit the worker's social security number on subsequent payrolls if the contractor reports the worker's name on all payrolls in the identical form in which it was reported on the first payroll, and the contractor has no other worker with the same name. It is permissible for the contractor to omit the worker's address on subsequent payrolls if the contractor will report the worker's new address if and when an address change occurs.

e. Incomplete Payrolls. Payrolls shall be examined to determine if they include all of the required items of information. Except where falsification is suspected, an incomplete payroll shall be returned to the prime contractor for completion. In most cases it will be better to request the prime contractor to supply the missing information by means of a new or supplemental payroll or a supplemental statement. If a payroll is false, it shall not be returned to the contractor. A report of such findings shall be referred to the HUD Field Office Labor Relations Staff.

f. Classification and Wage Rates. Classification and wage rates reported on the payroll shall be compared with the corresponding items on the applicable wage determination decision to determine whether the rate reported is at least equal to the rate required by the decision. If a lesser wage rate is found, request the contractor in writing to begin paying the required wage rate immediately and to make restitution to workers for past underpayments.

g. Computations. Payroll computations shall be spot-checked to determine whether the payrolls are accurate. Scattered minor errors may be ignored. If such errors are numerous, however, the contractor should be requested in writing to exercise more care in preparing the payrolls.

h. Deductions. Deductions shall be reviewed for any non-permissible deductions. Permissible deductions include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, or accident insurance, vacation or holiday pay, defraying costs of apprenticeship or similar programs. (See Section 7-1 (o)(p)(q)). Questions concerning permissibility of fringe benefits must be referred to the Department of Labor for determination.

i. Internal Revenue Service (IRS) Employer Identification Number. The initial payroll submission from each contractor and subcontractor shall contain the applicable IRS-Employer's Identification Number.

j. Signature. The statement of compliance must be signed by the owner, officer, or designated employee of the contractor. Written authority must be furnished by the owner or officer of the contractor where a designated employee signs the payrolls.

k. Requests by Outside Parties for Payrolls. In order to protect the personal privacy interests of employees, copies of weekly payrolls containing the individual's salary, work hours, claimed exemptions and tax status, address and social security number shall not be released to outside parties and may be withheld under Exemption 6 of the Freedom of Information Act unless any identifiers are first deleted.

SECTION 3 VIOLATIONS

3-4 CORRECTING VIOLATIONS, WITHHOLDING MONEYS, AND MAKING RESTITUTION. When any violation of labor standards requirements results in an underpayment of wages to employees, the local or State agency compliance officer or HUD, whichever is administering the construction contract, shall take necessary action. Where wage adjustments become necessary, the compliance officer shall notify the prime contractor (who is responsible for the correction of all violations) in writing to make such adjustments. Contractor confirmation of wage restitution amounting to less than $10 per worker is not required. Amounts in excess of $10 per worker require copies of signed statements by employees and corrected payrolls to be supplied to the compliance officer by the contractor as confirmation of payment to all affected employees. Should the violations not be corrected within thirty (30) calendar days of notification, the compliance officer upon written notice to the contractor may withhold or cause to be withheld from the contractor so much of the amounts due the contractor as may be considered necessary to ensure payment of laborers and mechanics the rates of pay which should have been received by such laborers and mechanics and to cover liquidated damages under the Contract Work Hours and Safety Standards Act (CWHSSA), if any and if applicable. Only an amount necessary to ensure payment of back wages and/or liquidated damages shall be withheld. If it is necessary to estimate such an amount, every action shall be taken to promptly determine an exact amount and to return any excess to the contractor.

a. Withheld Funds. Where local or State agencies are directly administering construction contracts, they shall establish where applicable a special account for depositing funds withheld for wage restitution.

b. Payment of Wage Restitution Where Funds Have Been Withheld. The local or State agency labor standards compliance person shall provide in the written notice to the prime contractor information specifying the reasons

for the withholding or suspension or intended withholding or suspension of contract payments. That information may include the failure to submit weekly payrolls promptly, the identity of underpaid workers, their correct classifications and wage rates, and the amounts of underpayments which have been computed. The contractor will then proceed to comply and to make the required payments and compute taxes owed, fringe benefits, and overtime accordingly. The contractor will supply the labor standards compliance person with signed employee statements as confirmation of payment as well as corrected payrolls. Should the contractor refuse to make such restitution as requested, the labor standards compliance person may disburse or cause to be disbursed out of withheld funds for and on account of the contractor or the subcontractor sufficient moneys to the respective employees to whom they are due. Should the contractor dispute the basis of the findings, see "e" below. Such funds should not be disbursed whenever the contractor is appealing the restitution or during the time allowed for instituting an appeal.

c. Procedure for Disbursement of Wages Due By The Local Or State Agency. In order to avoid drawing a check to a worker only to find that it cannot be delivered, the labor standards compliance person shall address a letter to each worker at his/her last known address and ask the worker to give a current address and Social Security number in order that arrangements may be made for the payment of additional wages found due. Upon receipt of a reply, the Social Security number must be checked with one on file (Form HUD-11 or payrolls if available in order to avoid delivery of a check to a false claimant). The net amount of wages found due shall be computed. The net amount is the gross amount minus deductions for the Federal Income Withholding Tax and the employee's share of the Social Security (FICA) Tax. Other itemized deductions which may be applicable (State and/or City) shall also be computed prior to determining the net due and remitted to such agencies. Prepare a Form W-2 for the employees. The checks shall be mailed to the employees, together with the employee's copy of the Form W-2, registered or certified mail, return receipt requested. Upon receiving receipts, a check payable to the Internal Revenue Service for the total of the amount of the wages withheld from the employees who have received payment shall be prepared. A tax return, Form 941, Employer's Quarterly Federal Tax

Return, shall be prepared and forwarded with the check. The "taxpayer" shall be identified on the return as:

(Appropriate local or State agency or HUD)
Agent for _____ Contractor on Project
(describe name and location of project)

Note On Return: "One - Time Return"

In the transmittal letter to Internal Revenue Service, the following statement may be helpful:

"This return covers only the taxes withheld from wages due employees engaged in the construction of (identify project). The wages were paid out of funds withheld from the contractor to assure payment of the wages. This return does not include the employer portion of FICA tax."

Note: Davis-Bacon Act Wage Restitution Disbursal. The Comptroller General reserves the right to disburse withheld funds to workers where violations of the Davis-Bacon Act occur and the contractor refuses to make payment. The only HUD program under which such disbursal would take place is Property Disposition where HUD or its agents have contracted for the work. See Exhibit 9 for instructions.

d. Unfound Workers. If all workers cannot be located and restitution made either by the contractor directly or through the use of withheld funds, sufficient funds shall be reserved in the account described in subparagraph "a" above for subject employees. Efforts should continue to be made to locate such workers. Should the workers not be located within three years from the date of creation of such an account, the funds shall be forwarded to HUD and credited to the appropriate U.S. Government account.

e. Disputes Over Findings. Should the contractor dispute the findings, the situation shall be reported promptly to the HUD Field Office Labor Relations Staff for its consideration and appropriate action. Should the HUD Field Office Labor Relations Staff or the Regional Office (where Labor Relations is regionalized) be unable to resolve the situation, the contractor shall be advised of his/her right to appeal to the Department of Labor under 29 CFR Section 5.11(a). Also see paragraph 4-6.

f. Overtime Violations and Liquidated Damages

(1) The prime contractor is responsible for proper overtime payment to all laborers and mechanics (and watchmen and guards employed by it or employed under a subcontract to it) employed on the project. The construction contract requires all subcontracts to contain clauses imposing the statutory overtime requirements. Where the required provisions do not appear in the subcontract, the prime contractor alone is responsible for the underpayments and liquidated damages.

(2) Contractors violating the Contract Work Hours and Safety Standards Act are liable to the United States for liquidated damages. Whenever the labor standards compliance person believes that overtime underpayments have occurred, he/she shall compute the overtime wages due. See Chapter 8 for a more detailed explanation on computation.

(3) Computation of liquidated damages is at the rate of $10 for each calendar day for which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the required overtime rates. In every case where it is necessary to compute liquidated damages, the contractor shall be notified in writing of the amount and the basis for the computations. This written notice of an intent to assess liquidated damages shall be sent by the HUD Field Office Labor Relations Staff upon receipt of a report from the local or State labor standards compliance person. The report shall contain a recommendation as to whether to assess or seek waiver or reduction. Funds may be withheld to cover the computed amount of liquidated damages pending an administrative decision by the HUD Field Office Labor Relations Staff.

(4) The contractor shall have 30 days to respond to the notice of computation and intent to assess. Should the contractor seek a reduction in whole (waiver) or in part of the liquidated damages in such a response, the contractor's explanation of the

violations shall include reasons as to why such action should be considered. The only grounds are that the sum of the computed liquidated damages is incorrect or that the violations were inadvertent notwithstanding the exercise of due care by the contractor. In all appealed cases, the HUD Field Office Labor Relations Staff will prepare its recommendations for submission to the Headquarters Office of Labor Relations. The Headquarters Office of Labor Relations will issue a final decision to the appropriate HUD Field Office Labor Relations Staff in cases involving $500 or less. In cases involving more than $500, the Headquarters Office of Labor Relations will transmit its recommendation to the Department of Labor for its final decision. Should a reduction in whole or in part be approved by the Department of Labor or HUD, respectively, any excess funds withheld shall be returned to the contractor as is appropriate.

(5) Should the contractor not respond in the prescribed period or HUD or DOL not approve of a waiver or reduction, liquidated damages shall be assessed by the Field Office Labor Relations Staff and collected and paid to the account of the U. S. Treasury. The check shall be transmitted by the HUD Field Office Labor Relations Staff to the Office of Finance and Accounting, Cash and Securities Section, HUD, Washington, D. C. 20410.

(6) The contractor may appeal a final decision to assess by HUD to the U. S. Claims Court within sixty days of date of receipt of a certified letter assessing liquidated damages.

g. Reporting Wage Restitution Made. The local or State agency labor standards compliance person shall prepare a Labor Standards Enforcement Report to be submitted to the appropriate HUD Office Labor Relations Staff indicating actions taken with respect to wage restitution and any other violations. The report should contain:

(1) Project name, location, and contract number
(2) Identity of the general contractor and names of affected employees and any restitution
(3) Identity of subcontractors and names of their employees and any restitution

(4) Detailed narrative as to violations leading to the restitution

(5) Liquidated damages computed under the Contract Work Hours and Safety Standards Act. Should there be such a computation, sufficient information must be provided to the HUD Field Office Labor Relations staff concerning the nature of the overtime violations to allow for any appropriate adjustment which may be indicated and requested by the contractor and final action or recommendations by HUD to the Department of Labor. (See Subparagraph (f) above).

(6) Where appropriate, a recommendation and justification as to sanctions, if any, recommended against the contractor involved. Should there be such a recommendation, further documentation may be required.

h. Deposit of Funds on HUD-Insured Projects. A project mortgage shall not be finally endorsed or a final advance thereon shall not be approved while labor standards violations have not been fully resolved unless the contractor executes a "Deposit Agreement" and deposits funds to ensure the payment of any required wage restitution. A Deposit Agreement in the format presented in the Appendix (Exhibit 8) shall be executed under the following conditions:

(1) Without awaiting receipt of evidence that all workers have received the wages due them;

(2) Without awaiting administrative-investigative determination of the wages which may be due and unpaid for work performed in the construction of the project;

(3) Without awaiting the outcome of the appeal which has been filed, or is to be filed, with the Department of Labor by or on behalf of the contractor contesting the findings of HUD or the Department of Labor that wages for work performed in the construction of the project are due and unpaid to the workers.

When the amount of unpaid wages has been finally determined by HUD or the Department of Labor, funds sufficient to pay the total gross amount of the wages

shall be held by HUD and the balance of the funds deposited, if any, shall be returned to the contractor; provided, that if the contractor appeals or has appealed such final HUD/DOL determination, then when the contractor has exhausted all administrative and any other rights of appeal, funds sufficient to pay the total gross amount of the wages found due by the highest authority which has ruled in the matter shall be held by HUD, and the balance of the funds deposited, if any, shall be returned to the contractor. The wages found due in all cases shall be paid directly to the workers to whom due from the funds submitted and held for that purpose by HUD.

Should HUD be unable to locate any worker within three years from the date of the Deposit Agreement, the funds deposited for that purpose shall be retained by HUD and credited to the appropriate U.S. Government account.

The Deposit Agreement shall be executed in an original and two copies. A schedule of the unpaid wage adjustments in an original and two copies is to accompany the deposit agreement. The schedule shall bear the project number, name and location (city), contractor's name, and the following information for each worker to whom a wage adjustment is due:

(1) Name of worker
(2) Address
(3) Social Security Number
(4) Hour amount of wages due
(5) Amount of employee withholding taxes applicable
    - Federal income tax
    - FICA
    - State
(6) Other permissible deductions, itemized
(7) Net wages due employee

The Field Office Labor Relations Staff shall retain one copy and transmit the original and one copy to: HUD, Cash and Securities Section, Office of Finance and Accounting, Washington, D. C. 20410. Refunds to contractors and payments to workers will be processed in the same manner using Standard Form 1047 (Public Voucher for Refunds) and Standard Form 1034 (Public Voucher for Purchases Other Than Personal) whichever is applicable.

Vouchers shall be mailed to HUD, General Ledger Section, Office of Finance and Accounting, Washington, D. C. 20410.

i. Suspension or Withholding of Insured Draws and Advances. Withholding of funds may be recommended by the Field Office Labor Relations Staff during the course of construction where there has been a failure by the contractor to comply with labor standards provisions after a written request by HUD to the contractor to comply has been made and the contractor has not complied within a thirty-day period. The recommendation shall contain a narrative justification for such action. Withholding from a draw or advance should not exceed sufficient amounts to cover actual or estimated wage underpayment. Suspension of a draw or advance is a drastic action which shall be taken only when a contractor continues to violate labor standards provisions (e.g., continues to underpay employees) after notification to desist. The suspension of an entire draw or advance shall not take place because one or more subcontractors have failed to comply. If there is sufficient cause, payments of line items attributed to the work of the subcontractors in violation should be deleted from the advance, and if the sum is insufficient to cover the estimated wage underpayments, an additional amount may be withheld. Suspension or withholding may also be requested by the Department of Labor. The failure by the contractor to execute the FHA 2403-A or continued failure to submit weekly payrolls over a substantial period of time is particularly serious.

j. Escrow Accounts for Labor Standards Violations - Section 8 Program. Moneys sufficient to cover any underpayments to employees shall be placed in escrow, as determined by the HUD Field Office Labor Relations Staff, in an account established by the owner under conditions stipulated by HUD controlling disbursement or in an account established directly by HUD and approved by the HUD Field Office Counsel. No Certification of Completion will be accepted by HUD in the presence of claims of underpayment or alleged violations of the labor standards provisions of the Agreement without a statement and proof that the owner has placed a sufficient amount in escrow to ensure payment of any contested underpayment in accordance with the above stipulations. Such accounts may bear interest and interest earned on the escrow monies shall be paid to the prevailing party or parties.

Chapter 4 HUD LABOR STANDARDS INVESTIGATIONS

4-1 INTRODUCTION: There is a distinction between investigations, which are normally concerned with a specific allegation or allegations of wrong doing in the labor standards area and inspections, which are routinely performed checks upon procedures and practices without there being allegations of wrongdoing. Because of this difference, investigations are necessarily much more thorough in that they are designed to either dispel the allegations made, or to assemble concrete evidence upon which administrative action, or even criminal action could be taken. Because of the seriousness of investigations, much more attention must be paid to details, and evidence must be obtained to substantiate all findings of the investigator. This chapter deals with investigative procedures and responsibilities of the HUD Field Office Labor Relations Staff.

4-2 WHEN INVESTIGATIONS ARE MADE. Investigations are made whenever HUD is put on notice (as a result of a complaint, allegation, a project inspector's report, referral from the Department of Labor, or request by a local or State agency) of any violations which are not readily adjustable or which are of a serious nature. Labor standards investigations are the primary responsibility of the Office of Labor Relations although there shall be close consultation with the Office of Inspector General where cases involve possible criminal violations.

4-3 PRIORITY OF INVESTIGATIONS. The investigation of labor standards complaints received from workers on the project must receive priority attention. In the event the responsible HUD Field Office Labor Relations Staff does not have sufficient resources to devote to an investigation, the Regional Administrator - Regional Housing Commissioner shall be promptly notified for assistance in identifying additional resources.

If the allegations seem to indicate widespread violations of a serious nature a full investigation shall be conducted in the manner or order outlined below. If the allegation is restricted to a specific violation involving one or two employees or is minor in nature, the investigation shall be limited to those steps outlined below which will produce enough evidence to substantiate or disprove the allegation.

Complaints submitted by sources other than persons working on the site of a general non-specific nature shall be evaluated and if without substantiation may be ignored. If there is a jurisdictional or organized labor dispute at the job site HUD must maintain complete neutrality and must take no action to influence its outcome.

4-4 CONDUCTING AN INVESTIGATION. All investigations should involve a logical sequence of actions taken by the investigator designed to efficiently uncover all pertinent facts and lead to supportable conclusions. At the outset of the investigation the investigator shall establish a case file. There shall be placed in that case file all documentary material pertaining to the investigation, such as complaints, if any, employee statements, employment records, and all other papers relevant to the investigation. The investigation should be conducted in a professional and fair manner. The following information should be reviewed in the order outlined. This, and other data, may be available at the offices of contractors, PHA's, and grantees thereby requiring a visit to those offices.

The information should be reviewed as follows:

a. Examination of the Contract. An examination of the contract should be made in order to ascertain that the required labor standards provisions have been inserted in the prime contract. Subcontracts must be examined separately. The following information should be set forth.

(1) Contract number

(2) Date of award

(3) Description of work

(4) Applicable wage rates

(5) Name and address of prime contactor and each subcontractor.

b. Wage Rate Decision Posting Requirement. Ascertain that a copy or copies of the wage rate decision has or have been properly posted.

c. Examination of Payrolls. Examine the certified weekly payrolls paying particular attention to classifications, hours worked, deductions, and wages paid.

d. Examination of Basic Time and Work Records. When it is necessary to visit an employer, a sufficient number of checks of the basic time cards, books, sheets, or other work or personnel records of a representative number of employees in each classifications should be made against the payroll records in order to disclose any possible discrepancies or to give reasonable assurance that none exist. Pertinent excerpts or copies of such records should be included in the case file. The employer should be interviewed as part of this process.

e. Check for Conformity with Apprentice/Trainee Requirements. Check for disproportionate ratios of apprentices or trainees to journeymen, misclassification of journeymen as apprentices, registration records and related matter.

f. Laborers and Mechanics Not Listed in the Wage Decision. Check as to whether any laborers or mechanics whose classifications are not listed in the wage rate decision have been employed. If so, describe the work they are performing, the tools used, the wages paid and whether or not they have been reclassified.

g. Employee Interviews. The conduct of employee interviews is essential to the carrying out of a successful investigation. Those interviews should cover a sufficient number of employees to serve as a check against the employer's records and the substance of the violations alleged. Employees should be informed that the information given is confidential, and that the information given will not be disclosed to the employer without the written consent of the individual employee involved in each instance. See Paragraph 3-2(b) for guidance in conducting employee interviews.

(1) Written Statements. Signed statements should be obtained when information given by an employee is pertinent to proof of a violation. Signed statements should always be taken where:

(a) Information concerning conditions of employment, when such information is missing from, or possibly falsified in, the employer's records;

(b) Intimidation or other "kickback" activity involving employees being forced to relinquish part of their compensation is involved;

(c) Pertinent information concerning an actual or potential controversy with the employer involved, as to the occurrence of a given violation is disclosed;

(d) Information concerning possible violations not previously known to the investigator, or other information which may become material to the overall investigation is obtained.

(2) Preparation of the Statement. The information given by an employee should be paraphrased in a concise

and clear manner which reflects the intent of the employee giving the information. The first person form should be used. A final line must be added stating that the employee has read the foregoing statement and that it accurately reflects his/her intent. The statement should be signed by the employee and witnessed by the investigator.

h. Investigative Report. The investigative report shall consist of a narrative summary of the facts disclosed by the investigation. An aid in preparing that report will be to check if the answers to the following questions appear in the report: who, what, where, when, why, and how. The following items should be set forth in the report:

(1) Contract identification data (e.g., contract number, location, name and address of contractor and or subcontractor(s) involved.

(2) A brief statement of the circumstances which brought about the investigation.

(3) A statement concerning the conduct and extent of the investigation, that is, who the investigator talked with, which records were examined, and any other action taken.

(4) A statement of facts concerning what the investigation disclosed. Were the allegations proven and if so, how? Were they dispelled and if so, how?

(5) Conclusions of the investigator as to willfulness, negligence, or other factors involved in the matter.

(6) Recommendations of the investigator as to further action with reasons for the recommendations and facts supporting them, or if the matter were resolved, how was such resolution accomplished?

4-5 INVESTIGATIVE FINDINGS. The report of an investigation will provide the basis for decisions concerning the amount of unpaid wages owed to each employee and to be withheld, corrective action required by the contractor, the assessment of liquidated damages in cases where the Contract Work Hours and Safety Standards Act applies, and debarment sanctions.

4-6 DISPOSITION OF FINDINGS. A meeting will be scheduled with the contractor by the HUD Field Office Labor Relations to discuss the findings and corrective action required to dispose of the findings.

a. Acceptance of Findings. If the contractor accepts the findings, the contractor will be advised of the specific steps which must be taken to achieve compliance, including the submission of corrected payrolls and statements from employees that they have received wages owed them. The case may be closed when such steps have been satisfactorily completed.

b. Refusal to Pay. If the contractor refuses to make restitution and all efforts to reach an agreement for payment are unsuccessful and the contractor has not chosen to exercise a timely right to appeal to the Department of Labor under 29 CFR Section 5.11(a), the investigative file and recommendations concerning debarment shall be forwarded through the Assistant to the Secretary for Labor Relations to the Department of Labor for its consideration and decision.

c. Settlements. When the evidence of labor violations is clear and incontrovertible, and the amounts due the workers can be computed with accuracy, there can be no modification or reduction of these amounts. However, there are situations where there is a lack of documentary evidence, sometimes because a contractor fails to comply with the provisions for record keeping, and other times because the evidence is unclear or the testimony of the various parties is in conflict. If the contractor has failed to keep accurate records, restitution calculations must be based upon employee interviews, partial records, and estimates. Since the contractor is at fault he must bear the brunt of responsibility. Nevertheless, he should be allowed to present any evidence which might modify the conclusions reached.

If the evidence is unclear despite adequate record keeping on the part of the contractor, an effort should be made to resolve the matter by negotiation. Negotiation should be conducted in the spirit of compromise, with the understanding that long procedural delays benefit neither the worker, the contractor nor HUD.

If in any of the above circumstances agreement cannot be reached, the contractor shall be advised of appeal procedures (29 CFR Section 5.11(a) and the investigative file shall be forwarded through the Assistant to the Secretary for Labor Relations to the Department of Labor for its consideration and decision.

Chapter 5 SANCTIONS

5-1 SANCTIONS UNDER VARIOUS LABOR STANDARDS STATUTES. Any breach of the labor standards contract provisions may result in contract termination. Specifically:

a. Violations of the Copeland Act by contractors could be the basis for termination of contract and could result in criminal prosecution by the Federal Government pursuant to 18 U.S.C. 874. Fraudulent execution of the requisite statements of compliance could result in prosecution under the False Information Act 18 U.S.C. 1001, 18 U.S.C. 1020, or 31 U.S.C. 231. The making of a false statement is a felony.

b. Violations of the Contract Work Hours and Safety Standards Act make contractors liable for unpaid wages and for liquidated damages to the United States, payable to HUD in the sum of $10.00 per worker per day for each violation. Intentional violations are a Federal misdemeanor, punishable for each and every offense by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or both. Violations may also be grounds for termination of contract.

c. Violations of the Davis-Bacon and Related Acts may result in (1) suspension of the project payment, advance, or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled, (2) withholding of insurance endorsement until deposit of funds, or (3) withholding of Section 8 HAP contract until escrow of funds. Violations may also result in contract termination, suspension or debarment of the contractor or subcontractor 29 CFR Part 5.

d. The U. S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides that conviction may result in not more than a $5000 fine or imprisonment for not more than two year or both for making false statements.

5-2 PROPOSING DEBARMENT SANCTIONS. The Department of Labor has sole authority to impose debarment on contractors or subcontractors or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest where aggravated or willful violations of the Federal labor standards provisions have been committed. The HUD Field Office Labor Relations Staff Director shall recommend debarment sanctions (through the Regional

Administrator) to the Assistant to the Secretary for Labor Relations where there are sufficient indications that there has been aggravated or willful violation of contract labor standards provisions. Such recommendations must be fully supported by documentation including:

a. An investigative report prepared by the HUD Field Office Labor Relations Staff or local or State agency or the Office of Regional Inspector General for Investigation;

b. A copy of the applicable wage determination;

c. A copy of the pertinent contract documents;

d. Copies of pertinent weekly payrolls and employee interview statements and any other related material;

e. Where applicable, documentation attesting to any indictments or convictions of the subject contractor/ subcontractor for labor standards violations.

The Assistant to the Secretary for Labor Relations will review the sufficiency of the documentation submitted and will advise the Region accordingly. The Department's recommendations for debarment will be concurred in by the Office of General Counsel before submission to the Department of Labor in accordance with 29 CFR Section 5.12.

Chapter 6 REPORTS

6-1 LABOR STANDARDS ENFORCEMENT REPORTS. Where underpayments total $1000 or more or are willful (or, in the case of the Davis-Bacon Act, where the contractor has disregarded its obligations to employees and subcontractors), the Field Office Labor Relations Staff shall prepare and send to the Headquarters Office of Labor Relations a detailed enforcement report (through Regional Labor Relations where applicable). The report shall provide a basis for a recommendation as to possible sanctions as well as the imposition of liquidated damages under CWHSSA (where applicable). The Headquarters Office of Labor Relations shall make the report available to the Department of Labor within 60 days after the completion of the investigation pursuant to 29 CFR Section 5.7(a)(2).

6-2 SEMI-ANNUAL ENFORCEMENT REPORTS. 29 CFR Section 5.7(b) requires each Federal agency to furnish the Secretary of Labor by April 30 and October 31 of each calendar year reports on compliance and enforcement of the labor standards provisions of the Davis-Bacon and Related Acts. This report will be compiled by Headquarters Labor Relations based upon submissions under paragraphs 4-4(h) and 3-4(g), and investigations performed by the Regional Inspectors General for Investigation. HUD Field Office Labor Relations Staffs shall prepare the required summary data and submit it (through Regional Labor Relations where applicable) to the Headquarters Office of Labor Relations 15 days prior to the established due dates for final submission to the Department of Labor.

Chapter 7 DAVIS-BACON AND RELATED ACTS INTERPRETATIONS AND APPLICATIONS

7-1 INTRODUCTION. This chapter provides additional guidance involving interpretations of DBRA administration and enforcement issues which frequently arise.

a. Force Account

Laborers and mechanics employed by a local or State agency (PHA) even though not employed by a contractor are subject to DBRA when performing development work financed by the U. S. Housing Act of 1937, as amended. DBRA prevailing wage requirements are not applicable where such employees are utilized in work defined as major repairs (deferred maintenance) pursuant to 24 CFR Part 868.3 and Part 868.9(h) which constitute project operation rather than development.

b. Working Subcontractors

Contractual relationships between contractors and alleged subcontractors (who perform mechanic's work) which are formed for the purpose of evading the application of prevailing wage requirements are expressly prohibited and may provide a basis for debarment. Where there is any any doubt as to the bona-fide nature of a self-employed subcontractor who has no other employees, the following must be checked:

1. Does the subcontractor have a registered trade name and is there a telephone listing under that name?

2. Does the subcontractor have a license?

3. Does the subcontractor have liability insurance or a subcontractor's bond?

4. Federal Tax Identification Number.

Any of these criteria in conjunction with a signed contract containing HUD Federal Labor Standards Provisions from each such subcontractor should be sufficient to establish that he or she is a bona-fide

subcontractor. Such a subcontractor will submit payrolls indicating only that he/she is the owner, the hours worked and the classification. The phrase "self-employed owner" shall be written under the name, address, and Social Security number (See Column 1 on the Optional Form WH-347). Nonbona-fide self employed subcontractors must be carried as employees on the payroll of the contractor who engaged him/her, and must be paid the prevailing wage rate for the classification of work performed.

c. Cleaning. Cleaning performed during construction is subject to prevailing wage provisions. In the absence of a specific wage rate for the cleaning classification or if DOL disapproves a conformance request, the cleaners must be paid the predetermined wage rate for laborers. Cleaning performed after the completion of construction in order to prepare the premises for occupancy which is not being done under the construction contract is not subject to the prevailing wage requirements.

d. Demolition. Demolition work, which is not related to construction, is not subject to the prevailing wage requirements of DBRA. For example, the demolition of a building because such structure is no longer needed would not in itself be a covered construction activity. However, where an existing building is being demolished as a phase of a construction project subject to DBRA, the demolition would also be covered, as in the case of demolition performed to permit construction of a new building.

e. Determining Proper Classifications for Various Work. Questions as to the proper classification of a laborer or mechanic for various types of work are resolved by making an area practice determination. In determining the proper classification for work performed on a project, it is immaterial whether the contractor is union or nonunion.

On projects where the prevailing wage rates for classifications in question on the applicable wage decision are based on negotiated rates, the prevailing practice concerning work performed in those classifications is that practice observed on projects built by contractors who are signatory to the collective bargaining agreements. Therefore, unless there is a jurisdictional dispute between the crafts, the duties ascribed to any job classification will be the same as those outlined in the appropriate collective bargaining agreements or if the collective bargaining agreements are silent on this issue the local unions involved must be consulted.

Conversely, in areas where open shop (nonunion) rates are determined to prevail for the classifications in question, those prevailing job practices followed on projects by open shop contractors in the same area become area practice.

f. Helpers. The use of helpers who use tools in assisting mechanics and who are paid below the minimum rates for mechanics is ordinarily not proper, since the apprentice or trainee is recognized as the individual who is to perform the less skilled craft work during his/her training period. Helpers are not recognized on a DBRA contract unless they are contained in the wage determination or a conformable rate is approved by the Department of Labor.

g. Relatives. There are no exceptions made in the enforcement of DBRA on the basis of family relationship for relatives who are performing the work of laborers or mechanics. They must be paid the prevailing wage rate for the classification of work performed and be included on the certified payrolls.

h. Employees of a Governmental Body. The Department of Labor has taken the position that the prevailing wage requirements do not apply to employees of a State or political subdivision of a State, but shall apply to employees of a private contractor who is subcontractor of the State or political subdivision. This rule does not apply to PHA employees under the U. S. Housing Act of 1937 (See Subparagraph 7-1(a)). Employees of utilities are exempt providing they are only extending existing service to the property.

i. Employees Performing Work in More than One Classification. A person employed as a laborer or mechanic employed on a contract subject to DBRA and performing work in more than one classification may be paid not less than the predetermined rate for the actual hours spent in each classification, provided the work performed is capable of separation into more than one classification, and provided that the time records are kept in accordance with the actual hours spent in each classification. Work which is normally performed as part of the mechanic's craft is not separable.

j. Laborers and Mechanics - Definition. The terms "laborers" and "mechanics" are construed to include at least those workers whose duties are manual or physical in nature as distinguished from mental or managerial. Since the classifications of laborers and mechanics to whom specified wage rates are payable are identified in the DBRA wage determination, there is ordinarily no need to distinguish between laborers and mechanics. However, generally, mechanics are considered to include any worker who uses tools, or who is performing the work of a trade.

k. Precutting of Parts and Prefabrication of Assemblies. The precutting of parts and/or the prefabrication of assemblies are not covered unless conducted in connection with and at the site of the project, or in a temporary plant set up elsewhere to supply the needs of the project.

l. Supply and Installation Contracts. The manufacture or furnishing of materials, articles, supplies or equipment is not subject to prevailing wages unless conducted in connection with and at the site of the project, or in a temporary plant set up elsewhere to meet the needs of the project. If a supply contract, not otherwise covered, requires the supplier to install the product, the installation portion of the contract is subject to prevailing wage requirements except that if the installation involves not more than an incidental amount of construction activity, it is not subject to prevailing wage requirements. Contracts for the supply and installation of window shades, venetian blinds, and traverse rods and draperies involve only an incidental amount of construction activity, and therefore are not subject to prevailing wage determinations. The installation of an elevator or boiler is an example of work that is subject to prevailing wage rates. Questions concerning the coverage of installation activity should be referred to HUD Headquarters for determination.

m. Start of Construction. "Start of Construction" as that term is used in connection with labor standards and prevailing wage requirements, means the beginning of initial site clearance and preparation, provided those activites are pursued diligently and are followed without appreciable delay by other construction activity.

n. Site of Work. The "site of work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and to other adjacent or nearby property used by the contractor in such construction which can reasonably be said to be included in the "site" because of proximity. Operations of a commercial supplier or materialman established in the proximity of but not on the active site of work prior to the opening of bids are not covered by the Act even if dedicated exclusively to the Federal project for a time.

o. Fringe Benefits - Funded Plans. A contractor may credit contributions for "bona fide" fringe benefits regardless of whether the Department of Labor has found the particular benefits to be prevailing in the area. Such

fringe benefits must be "bona fide." Ordinarily, bona fide benefits are those common to the construction industry and are paid directly to the employee in cash or into a fund, plan, or program on the employee's behalf. Contractors may take credit for contributions made under such conventional plans without requesting approval of the Department of Labor.

p. Fringe Benefits - Unfunded Plans. Where fringe benefit plans are not of the conventional type, it will be necessary for the Department of Labor to determine if the benefits are "bona fide." Contractors seeking approval of unfunded plans must obtain approval from the Department of Labor.

q. Fringe Benefits - General

1. Contributions to funded plans must be made at least quarterly.

2. When the cash paid and the per hour contribution for benefits do not equal the total rate set forth in the wage determination, the difference must be paid to employee in cash.

3. Fringe benefits must be paid for straight time and overtime; however, fringe benefits are not included when computing the overtime rate.

4. Employees who are excluded from funded plans for whatever reason must be paid fringe benefits in cash.

5. Vacation and sick leave plans are generally unfunded, paid from the contractor's own account, and require Department of Labor approval before a contractor takes credit toward meeting the fringe benefit obligation.

6. In determining the cash equivalent credit for fringe benefits payments, the period of time to be used is the period covered by the contribution. For example, if an employer contributes to a plan on a weekly basis, the total hours worked each week (federal and non-federal) by each employee should be divided into the contribution made by the employer.

r. Summer Youth Employment. Youth who are bona fide students and part of a bona fide "Youth Opportunity Program" may be employed on Davis-Bacon projects on a

temporary basis during the summer months and paid below the predetermined Davis-Bacon rates. Department of Labor All Agency Memoranda #71 and #96 provide policy guidance in this area. HUD requires that the following stipulations be met before summer youth may be employed at less than Davis-Bacon rates:

(1) Youth must be sponsored by a responsible employment and training organization such as the National Alliance of Business and similar organizations as part of a bona fide "Youth Opportunity Program";

(2) The youth must be bona fide students employed on a temporary basis for the summer months;

(3) Where collective bargaining agreements representing workers performing similar or related activities at the worksite to which youth are outstationed exists, the union or unions representing those workers must provide concurrence as to the design of the employment project and the use of the youth;

(4) Such employment must be provided in accord with statutory safety and minimum wage requirements (both State and Federal);

(5) Competent supervision must be provided to all youth employed on the project worksites. Ratios of youth to such supervisors should be no greater than four to one.

In order to ensure that the administration of summer youth employment complies with Department of Labor policies and regulations, requests for exceptions to the application of DBRA must be made to the HUD Field Office Labor Relations Staff. Such requests must adhere to the above stipulations. The HUD Field Office Labor Relations Staff will advise the requesting contractor of its decision. The specific provisions of the agreement (between management and labor) or the plan of employment must be submitted to the Department of Labor, Wage and Hour and Public Contracts Division, for enforcement purposes. The HUD Field Office Labor Relations Staffs will send such plans to the Headquarters Office of Labor Relations.

s. Non-Covered Job Classifications. Workers performing the normal duties of the following job classifications are not subject to DBRA prevailing wage requirements:

(1) Project Superintendant

(2) Project Engineer

(3) Project foreman, as distinguished from a working foreman (working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time spent and must be paid the applicable rate for the hours so worked).

(4) Watchman

(5) Water carrier

(6) Messenger, clerical workers

t. Financing of Construction Work - CDBG. Laborers and mechanics employed by contractors and subcontractors on construction work financed in whole or in part with Title I assistance are subject to Davis-Bacon wage rates under Section 110 of Title I. To the extent that Part 570 requires broader Davis-Bacon coverage, e.g., on construction work "assisted" under that Part, the regulations shall govern unless an individual waiver is requested and granted by the Assistant Secretary for CPD. The use of Title I funds for any of the following items is an example of financing of construction work, and Davis-Bacon wage rates shall apply to all construction work performed on the building or property in question: construction loans or grants; payment for construction materials; payment for the cost of equipment whose installation requires payment of prevailing wages under Section 7-1 (1) above (regardless of whether the use of Title I funds includes payment for the actual installation); payment of interest (or part of the interest) on a construction loan; payment of construction loan origination fees; provision of a Title I- funded permanent loan, mortgage, or grant on a structure constructed with a private construction loan when the parties contemplate such ultimate Title I financing at the time of construction; Title I funded "collateral" or "default" accounts established with the lending bank which receive no interest or less than the interest payable on demand accounts. The provision of Title I funds to purchase a property on which construction will subsequently take place with private funds does not require Davis-Bacon wage rates on such construction. Questions as to whether a use of Title I funds

constitutes financing of construction work shall be referred to HUD Headquarters for determination.

u. Contract Award. A contract shall be deemed awarded in accordance with the following guidelines:

(1) Low-Rent Public Housing (Conventional). The date of the registered letter making the award.

(2) Low-Rent Public Housing (Turnkey). The date of the Contract of Sale as given in the first paragraph of the contract.

(3) All other programs. The date of the adoption of a resolution or ordinance authorizing the award or where the award is conditioned on HUD approval, then the date of HUD's letter or telegram concurring in the award.

v. Technical/Maintenance Wage Rates - Public Housing. Section 12 of the U. S. Housing Act of 1937 requires that wages prevailing in the locality shall be paid to all architects, technical engineers, draftsmen and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation of the project. Such wages are determined or adopted by HUD.

Chapter 8 INTERPRETATIONS AND APPLICATION - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

8-1 INTRODUCTION. This chapter deals with specific interpretations and applications of the Contracts Work Hours and Safety Standards Act (CWHSSA) as it applies to HUD housing and community development programs.

8-2 SCOPE. CWHSSA applies to all HUD programs which are subject to the prevailing wage requirements of the Davis-Bacon and Related Acts except where HUD's participation is solely in the form of a loan guarantee or insurance. If HUD's participation is limited to FHA insurance, CWHSSA does not apply; however, if the FHA insured project is also assisted under Section 8 or Section 202 of the Housing Act of 1959, CWHSSA is applicable. CWHSSA also applies to maintenance laborers and mechanics employed by public housing authorities.

8-3 COVERAGE. CWHSSA provisions apply to all laborers and mechanics (including watchmen and guards). The provisions do not generally apply to supervisory, professional, and clerical personnel.

8-4 SITE OF WORK. CWHSSA has no job site limitations. For example, where an employee performs work at the construction site and continues such work at a shop or other facility, all hours worked at both locations including travel time between shall be subject to CWHSSA.

8-5 HOURS WORKED. Only hours spent on the federally-funded or assisted contract or contracts need be considered in computing overtime under CWHSSA.

8-6 LIQUIDATED DAMAGES. CWHSSA violations render the contractor and subcontractor liable to affected employees for his/her unpaid wages and to the United States for liquidated damages. Computation of liquidated damages is at the rate of $10 for each calendar day for which each individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the required overtime rate. If the daily overtime (OT) hours equal or exceed the weekly OT hours, liquidated damages should be computed for the calendar days upon which daily OT is worked. On the other hand, if the weekly OT hours exceed the daily OT hours, liquidated damages should be computed for the days on which the weekly OT hours were worked.

Chapter 9 HUD LABOR STANDARDS COMPLIANCE REVIEWS AND REPORTS

9-1 HUD LABOR STANDARDS COMPLIANCE REVIEWS. Technical labor standards compliance reviews for monitoring low rent housing authorities, Community Development Block Grant, and Urban Development Action Grant programs will be performed selectively by the Field Office Labor Relations Staffs. All States administering CDBG programs will be reviewed annually. If insufficient information is found at the State level to determine compliance, the Labor Relations Specialist may go directly to State grantees. The State must first be given an opportunity to provide such information as well as an opportunity to accompany the Specialist on a review. Headquarters CPD must be consulted before State grantees are reviewed. Such reviews will be closely coordinated with appropriate program staff and with all other audit activities to avoid duplication. Reviews will be in addition to normal ongoing investigations and enforcement operations performed by Field Office Labor Relations Staffs. The HUD Guide entitled "Conducting Labor Standards Compliance Reviews" shall be used in carrying out review functions and in preparing required reports.

9-2 REPORTS. Detailed reports of each labor standards compliance review will be prepared covering labor standards enforcement staffing, project inspection activities, weekly payroll review, complaint responsiveness, preconstruction conferences, violations resolution, and records maintenance. Such reports will be made available to the Headquarters Office of Labor Relations upon request. All findings resulting from compliance reviews must be closed and documentation to that effect will be maintained in compliance review files.

Chapter 10 STATE RESPONSIBILITY FOR SMALL CITIES PROGRAM AND HUD FIELD OFFICE RESPONSIBILITIES FOR URBAN DEVELOPMENT ACTION GRANT PROGRAM

10-1 SMALL CITIES PROCEDURES. The CDBG State Small Cities Program gives the States primary and direct responsibility for overall administration of funds distributed under this program pursuant to 24 CFR, Part 570, Subpart I. In accordance with the policy and objectives of this program, HUD has delegated to the States certain labor standards procedural and program responsibilities. HUD retains its overall labor standards responsibilities consistent with Reorganization Plan No. 14 of 1950 and 29 CFR Part 5. Refer to State Community Development Block Grant Program: A Guide to Federal Requirements (May, 1983), for additional information.

Each State administering CDBG funds:

a. Must submit certification of its intent to comply with the requirements of the Davis-Bacon and Related Acts, the Contract Work Hours and Safety Standards Act, and the Copeland Act. By so certifying, the State assures that methods of administration at the State level as well as those of recipients will be adequate to meet the requirements of labor standards statutes and implementing regulations (24 CFR Subpart I, Section 570.496);

b. Must maintain records which demonstrate that recipients were informed about all applicable labor standards provisions and that all construction work was performed in accordance with the applicable labor standards provisions;

c. Should assign responsibility for assuring effective labor standards administration and enforcement to a specific staff;

d. Must maintain records demonstrating that technical assistance has or will be provided to recipients;

e. Processes through the Department of Labor wage determination requests and additional job classifications and assures that Small Cities are notified of all wage determination modifications;

f. Performs prime contractor eligibility checks for Small Cities;

g. Receives labor standards enforcement reports from Small Cities, pursuant to 29 CFR, Section 5.7(a) and paragraph 6-1 of this Handbook, and transmits to the Department of Labor;

h. May refer potential criminal or complex investigations to HUD for appropriate action;

i. Refers CWHSSA liquidated damages assessment cases and debarment recommendations to HUD for appropriate action;

j. Assures that worker complaints are handled with dispatch;

k. Makes reviews of its grantees to determine compliance with labor standards.

10-2 URBAN DEVELOPMENT ACTION GRANT PROCEDURES. Special efforts will be made by HUD Field Office Labor Relations Staffs to assure that all UDAG construction projects which are covered by the Davis-Bacon and Related Acts contain Federal Labor Standards Provisions and a current prevailing wage determination in the relevant construction contracts. Labor Relations staff will also provide any necessary technical assistance to grantees and recipients. Questions concerning the applicability of the Davis-Bacon and Related Acts must be referred to the Headquarters Office of Labor Relations.

Applicability of Federal Labor Standards to HUD Programs

Program and Statutory Authority	Authority for Davis-Bacon Wage Rate Applicability	Exception to Coverage	Statutory Duty To Assure Payment of Prevailing Rate	Special Requirements or Features	Activities Covered By Basic Statute to Which Davis-Bacon is Relevant	Does Contract Work Hours and Safety Standards Act (CWHSSA) Apply?	Applicable Contract Form
Community Development Block Grants, UDAG (Title I, Housing & Community Development Act of 1974, as amended)	§110 "All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this title "	"Rehabilitation of residential property" designed for residential use by fewer than 8 families §107(d)(2) "The Secretary may waive, in connection with grants to Indian tribes, the provisions of section 109 and section 110 "			§105 construction, reconstruction, or installation of public public works, facilities and site or other improvements public improvements clearance, demolition, removal and rehabilitation of buildings and improvements "	Yes	4010 (Federal Labor Standards Provisions)
Assistance to State Housing Finance and Development Agencies (HCD Act of 1974)	§802(g) "All laborers and mechanics employed by contractors or subcontractors in housing or development activities assisted under this section "	"Construction of residential property designed for residential use" by fewer than 8 families	No assistance shall be extended without adequate assurance of compliance		§802(a) " activities designed to provide housing and related facilities through construction, or rehabilitation revitalization of slum and blighted areas development and redevelopment of industrial, manufacturing, and commercial facilities "	Yes	52644A (Part I of the Agreement to Enter Into Housing Assistance Payments Contract - New Construction or Substantial Rehabilitation) 52644B (Part II of the Agreement to Enter Into Housing Assistance Payments Contract New Construction or Substantial Rehabilitation)

EXHIBIT 1

Program and Statutory Authority	Authority for Davis-Bacon Wage Rate Applicability	Exception to Coverage	Statutory Duty to Assure Payment of Prevailing Rate	Special Requirements or Features	Activities Covered By Basic Statute to Which Davis-Bacon is Relevant	Does Contract Work Hours and Safety Standards Act (CWHSSA) Apply?	Applicable Contract Form
Low Rent Housing (U.S. Housing Act of 1937)	§12 "Any contract for loans, annual contributions, sale or lease pursuant to this Act ... shall require prevailing wages to be paid laborers and mechanics employed in the development of the project involved."	Section 8 housing with fewer than 9 units, or which is built or rehabilitated prior to any agreement between the Secretary or Public Housing Agency and owner or sponsor for same.	HUD must acquire certification of compliance prior to payment under assistance contract.	Covers PHA's own employees engaged in development in addition to contractor and subcontractor. HUD Determined Rates Section 12 also requires payment of prevailing rate determined by HUD to architects, technical engineers, draftsmen and technicians employed in project development and maintenance laborers and mechanics employed in operation of the project.	§4(a) "... to public housing agencies to help finance or refinance the development, acquisition or operation of lower income housing projects by such agencies." §3(c)(1) "... 'development' means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment in connection with a lower income housing project. Construction activity in connection with a low income housing project may be confined to the reconstruction, remodeling, or repair of existing buildings." §8(a) "... assistance payments may be made with respect to existing housing ..."* §8(e)(5) "For the purposes of upgrading the National housing stock assistance payments pursuant to contracts with owners or prospective owners who agree to upgrade housing so as to make and keep such housing decent, safe, and sanitary through upgrading which involves less than substantial rehabilitation, as such upgrading and rehabilitation are defined by the Secretary." *New construction and substantial rehabilitation were repealed by Section 209 of the Housing and Urban - Rural Recovery Act of 1983.	Yes	-5370 (General Conditions Low Rent Public Housing) -53015 (Turnkey Contract of Sale - Parts I & II) -52538-A (Part I of the Agreement to Enter Into Housing Assistance Payments Contract - Moderate Rehabilitation) -52538B (Part II of the Agreement to Enter into Housing Assistance Payments Contract - Moderate Rehabilitation) -53011 (Terms and Conditions, Part Two Consolidated Annual Contributions Contract - Low Rent Public Housing) -52521A (Part I of the Agreement to Enter Into Housing Assistance Payments Contract - New Construction or Substantial Rehabilitation - Private Owner/PHA -52521B (Part I of the Agreement to Enter Into Housing Assistance Payments Contract - New Construction or Substantial Rehabilitation - Private Owner/HUD or PHA-Owner/HUD) 52521C (Part I of the Agreement to Enter Into Housing Assistance Payments Contract - Disposition of Previously HUD-Owned Projects) -52521D (Part II of the Agreement to Enter Into Housing Assistance Payments Contract - New Construction, Substantial Rehabilitation or Previously HUD-Owned) -52750 (Agreement to Enter Into Housing Assistance Payments Contract - Section 515 Rural Rental Housing Loan Program)
Rental Rehabilitation and Development Grants (Section 17 of U.S. Housing Act of 1937)	§17(a)(3) "A structure assisted under this Section shall be treated as a project subject to a mortgage insured under section 220 of the National Housing Act for the purpose of Section 212 of such Act."	Same as coinsurance under §220 of National Housing Act (see below)			§17(a)(1)(A) "... rental rehabilitation grants to States and units of several local government to help support the rehabilitation of privately owned real property to be used for financially residential rental purposes ..." §17(k)(1) "... rehabilitation grant means a grant to finance moderate rehabilitation ..." §17(a)(1)(B) "... development grants for new construction or substantial rehabilitation ..."	Yes	4010

Program and Statutory Authority	Authority for Davis-Bacon Wage Rate Applicability	Exception to Coverage	Statutory Duty To Assure Payment of Prevailing Rate	Special Requirements or Features	Activities Covered By Basic Statute to Which Davis-Bacon is Relevant	Does Contract Work Hours and Safety Standards Act (CWHSSA) Apply?	Applicable Contract Form
National Housing Act 207 Rental housing, 608 war housing authorization to insure has expired, 213 cooperatives, Title VII, 803 armed services authorization to insure has expired, 810 housing, 908 housing authorization to insure has been terminated, 234(d) condominiums	§212 "The Secretary shall not insure under section unless the principal contractor [certifies that] the laborers and mechanics employed in the construction of the dwelling or dwellings or other housing project involved "		FHA shall not insure unless principal contractor certifies that the rates prevailing between time of application for assistance and beginning of construction have been paid	Sec 212(b) of the National Housing Act authorizes the Commissioner to make regulations to carry out the labor standards provisions of Sec 212(a)	§207(b)(2) "*** [Mortgage insurance under] this section is intended to facilitate particularly the production of rental accommodations, at reasonable rents, of design and size suitable for family living " §213(a) "In addition to mortgage insured under 207 the Secretary is authorized to insure mortgages [of nonprofit cooperatives]" §810(b) [mortgage insurance for military and essential civilian personnel and NASA employees] §234(d) " multifamily projects to be constructed or rehabilitated. "	No	2554 (Supplementary Conditions of the Contract of Construction-FHA Mortgage Insurance)
220 Urban redevelopment housing, 233 experimental housing	§212	Exemption on property designed principally for residential use of under 12 families	Same as above	Same as above	§220(a) "rehabilitation of existing dwelling accommodations and the construction of new dwelling accommodations " §220(h)(1)(A) " the term home improvement loan means a loan for the purpose of financing the improvement of an existing structure used primarily for residential purposes (b) the term improvement means conservation, repair, restoration, rehabilitation, conversion, alteration, enlargement, or remodeling "	No	Same as above
221(d)(3) and (4) housing for low and moderate income and displaced families, 221(h)(1) sale of rehabilitated housing to low-income people, 242 nonprofit hospitals	§212	Exemption on 221(h)(1) projects designed principally for residential use for not more than eight families HUD can waive provision where services are donated without compensation to lower cost on cooperative (d)(3) or (4) projects or 242 hospitals, or are similarly donated by the owner or other persons (not otherwise employed at any time in the rehabilitation of the property) on a 221(h)(1) non-profit rehabilitation project	Same as above	Same as above	§221(a) " to assist [through mortgage insurance] private industry in providing housing for low and moderate income families and displaced families " §221(h)(1) " to insure any mortgage executed by a nonprofit organization to finance the purchase and rehabilitation of deteriorating or substandard housing for subsequent resale " §242(d) " to insure any mortgage which covers a new or rehabilitated hospital . "	Not applicable However, §212(a) provides that "each laborer or mechanic employed on any facility covered by a mortgage insured under section 242 shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be "	Same as above

Program and Statutory Authority	Authority For Davis-Bacon Wage Rate Applicability	Exception To Coverage	Statutory Duty To Assure Payment of Prevailing Rate	Special Requirements Or Features	Activities Covered By Base Statute to Which Davis-Bacon Is Relevant	Does Contract Work Hours and Safety Standards ACT (CWHSSA) Apply	Applicable Contract Forms
231 housing for elderly, 232 nursing homes, 235 (j)(1) Home ownership for Lower Income Families, 236 Assistance for rental and cooperative housing	§212	Exception on 235 (j)(1) projects designed principally for residential use for not more than eight families. HUD can waive provision where services are donated without compensation for purpose of lowering costs	Same as above	Same as above	§231 Purpose is to assist in relieving shortage of housing for elderly persons. "Housing" means "eight or more new or rehabilitated units."	No	Same as above
241 Supplemental Loan Program	§241(a)(5) a supplemental loan shall "be governed by the labor standards provisions of section 212 that are applicable to the section or title pursuant to which the mortgage covering the project or facility is insured or pursuant to which the original mortgage covering the project facility was issued."				§241 "Supplemental loan means a loan, advance of credit . . . made for the purpose of financing improvements or additions to such project, hospital or facility . . ."	No	Same as above
					§232 Purpose is to assist in provision of " . . . development of nursing homes . . . development of intermediate care facilities . . ."	No	
					§235(j)(1) " . . . to insure a mortgage . . . to finance the purchase of housing, and the rehabilitation of such housing . . ."	Yes	
					§236(b) "Interest reduction payments . . . may involve either new or existing construction . . ."	Yes	
Senior Citizen Housing (Housing Act of 1959 as amended) Sec. 202)	§202(c)(3) "all laborers and mechanics employed by contractors and subcontractors in the construction of housing assisted under this section . . ."		Same as above		§202(d)(1) " . . . 'housing' means structures suitable for dwelling use by elderly or handicapped families which are . . . new structures, or . . . provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate . . ."	Yes	Same as above
					(d)(7)" . . . 'construction' means erection of new structures or rehabilitation, alteration, conversion, or improvement of existing structures."		
Rehabilitation (Housing Act of 1964 Sec. 312(e))	§312(e) " . . . the Secretary shall have . . . the functions, powers and duties set forth in section 402 of the Housing Act of 1950 . . ." Specifically, section 402(f) provides " . . . all laborers and mechanics employed by contractors or subcontractors on any project assisted under this title, the construction or rehabilitation of which was commenced after the date of enactment of the Housing Act of 1959 . . ."	Same as above plus HUD Handbook exception for loans on projects of 8 residential units or less	HUD shall take such action as may be necessary to assure compliance		§312(a) " . . . loans . . . to finance rehabilitation . . ." §321 (b)(1) " . . . 'rehabilitation' means the improvement or repair of a structure or facilities in connection with a structure, and may include the provision of such sanitary or other facilities as are required by applicable codes, the urban renewal plan, or a statewide property insurance program . . ."	Yes	4010
Title X Land Development	§212 " . . . with respect to laborers and mechanics employed in land development . . ."		Same as above		§1001(e) "the term 'land development' means the process of making, installing, or constructing improvements."	No	2554

Program and Statutory Authority	Authority For Davis-Bacon Wage Rate Applicability	Exception To Coverage	Statutory Duty To Assure Payment of Prevailing Rate	Special Requirements Or Features	Activities Covered By Basic Statute to Which Davis-Bacon Is Relevant	Does Contract Work Hours and Safety Standards ACT (CWHSSA) Apply	Applicable Contract Forms
Title XI Group Practice Facilities	§212		Same as above		§1101(b) to insure mortgages " executed by a group practice unit or organization "	No	2554
Secretary-Owned Properties	Davis Bacon 40 U.S.C. §276(a) Contracts "for construction, alteration and/or repair including painting and decorating of public buildings or public works " prevailing wages are "to be paid various classes of laborers and mechanics and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and not less often than once a week regardless of any contractual relationship which may be alleged to exist [between them] "	Contracts $2000 or less	Contracting officer may withhold from contractors or subcontractors any deficiencies owing to laborers and mechanics employed by the contractor or subcontractors		§276(a) "construction, alteration and/or repair of public buildings or public works "	Yes	SF-19a

EXHIBIT 2

Friday
April 29, 1983

Federal Register

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Office of the Secretary

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Office of the Secretary

29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

[NOTE: This reprint incorporates editorial corrections that are published in the **Federal Register** of Friday, May 6, 1983]

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Implementation of final rule.

SUMMARY: This document provides for implementation of regulations, 29 CFR Part 5, Subpart A, previously published in the **Federal Register** on May 28, 1982 (47 FR 23658), on labor standards applicable to contracts for federally financed and assisted construction subject to the Davis-Bacon and Related Acts and contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA), to the extent that its implementation is permitted by the permanent injunction issued by the U.S. District Court for the District of Columbia on December 23, 1982. The enjoined provisions of the May 1982 final rule continue to be deferred.

DATES: Effective date: June 28, 1983. See **SUPPLEMENTARY INFORMATION** below for dates of applicability.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: 202–523–8305.

SUPPLEMENTARY INFORMATION: On August 14, 1981, a proposal was published in the **Federal Register** (46 FR 41456) to make revisions to Subpart A of Regulations, 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act), allowing 60 days for public comment.

On May 28, 1982, the regulation was published in the **Federal Register** (47 FR 23658) as a final rule with a scheduled effective date of July 27, 1982. However, on June 11, 1982, a suit was filed against the Department of Labor in U.S. District Court for the District of Columbia seeking to prevent the implementation of the revised regulations. On July 22, 1982, the Court issued a preliminary injunction enjoining the Department from implementing certain provisions of the revised regulations pending final disposition of the suit *(Building and Construction Trades Department, AFL-CIO, et al.,* v. *Raymond J. Donovan, et al.,* 543 F. Supp. 1282). The Department published a notice in the **Federal Register** on July 26, 1982 (47 FR 32070), deferring the implementation of this regulation in its entirety until further notice.

On December 23, 1982, the Court issued a permanent injunction which, as modified by its order of January 17, 1983, enjoined §§ 5.2(n)(4) (helpers), 5.5(a)(1)(ii)(A) (helpers), 5.5(a)(4)(iv) (helpers), 5.5(a)(3)(ii) (Copeland Act requirements), and 5.6(a) (2) and (3) (Copeland Act requirements) of this regulation. The Department has appealed this ruling.

The document published today implements those provisions of the final rule published in the **Federal Register** on May 28, 1982 (47 FR 23658) which have not been enjoined by the court. The effective date of the enjoined provisions is deferred, by separate notice in today's **Federal Register,** pending final determination of the validity of those provisions. If the Department prevails on appeal, the deferred provisions (§§ 5.2(n)(4), 5.5(a)(1)(ii)(A), 5.5(a)(3) (ii) and (iii), 5.5(a)(4)(iv), and 5.6(a) (2) and (3)) will then be implemented.

As described more fully below, the court order necessitated corresponding deletions of sections or portions of sections in the text of the regulations now being implemented; in addition, since the court enjoined the new rule's elimination of the requirement for weekly submission of certified payrolls, that requirement from § 5.5(a)(3)(ii) of the previous regulations is incorporated in the text. To avoid confusion, the text of the entire rule as implemented at this time is set forth herein.

The following is a description of the changes made to the May 28, 1982 regulations in order to comport with the Court's decision and order, pending final disposition of the appeal.

Sections 5.2(n)(4) and 5.5(a)(4)(iv)—Helpers.

The enjoined definition of "helper" in § 5.2(n)(4), as well as the conditions governing the use of helpers contained in enjoined § 5.5(a)(4)(iv), are deleted from the text.

Section 5.5(a)(1)(ii)(A)—Conformance Procedures.

This section as enjoined provided that helper rates could be conformed without regard to the requirement applicable to all other conformance actions that the work to be performed by the conformed class is not work performed by a class already listed in the wage determination. The separate treatment of helpers in the conformance of wage rates has been deleted from the text.

Sections 5.5(a)(3) (ii) and (iii) and 5.6(a) (2) and (3)—Submission of Wage Payment Information.

These sections would have eliminated the requirement that contractors submit weekly a copy of payrolls and instead would have required only a weekly submission certifying compliance with the Davis-Bacon and Copeland Acts. The regulations would have required contractors to submit payrolls upon request of contracting agencies or the Department of Labor, but such requests would be made only in conjunction with specific compliance checks or enforcement actions. Because of the injunction, the weekly payroll submission requirement in the previous regulation has been added to the text, with language clarifying that copies of regular payrolls containing all of the required information (in any form desired by the contractor) are sufficient to satisfy the requirements. Furthermore, Optional Form WH–347 is available for the purpose of reporting payroll information if the contractor so chooses, but it is not mandatory that this form be used.

In addition to the textual changes described above, the following necessary changes have been made.

The definition of "construction" in § 5.2(j) is amended to delete the reference to "initial construction" contained in section 113 of Title 23, U.S.C., in order to comport with a legislative amendment effective on January 6, 1983, as part of the Surface Transportation Assistance Act of 1982, Pub. L. 97–424. (See also § 5.1(a) 12.)

An editorial change is made in the text of the conformance procedures contained in § 5.5(a)(1)(ii) (B) and (C) to clarify that the contracting officer must concur with a proposed classification and wage rate conformance action before submitting the matter to DOL for review or else it will be considered a dispute to be resolved by DOL, and to provide further that the contracting officer will be notified of the Wage and Hour Administrator's decision on all proposed conformance actions.

Section 5.15 is amended to include in paragraph (d)(4) the variation from the overtime requirements of the Contract Work Hours and Safety Standards Act for pilots and copilots of fixed-wing and rotary-wing aircraft employed on contracts for fire fighting or suppression and related services, which was published as a final rule in the **Federal Register** of July 2, 1982 (47 FR 28916).

Minor editorial changes and necessary typographical corrections have also been made in the following sections: Table of Contents at § 5.11; §§ 5.1(a); 5.2(h); 5.2(j); 5.2(n); 5.5(a)(4); 5.7(d); 5.8(b); 5.11; and 5.12(d)(4).

The document being published today is not a major rule since it is simply a republication and implementation of provisions previously published. A full Final Regulatory Impact and Regulatory Flexibility Analysis was prepared in connection with the May 28, 1982 publication of the regulations and a summary was published therein. See 47 FR 23661. Because of the Court injunction, the alternatives selected cannot be fully implemented at this time.

As discussed above, this document is only a republication and implementation of regulations previously published for notice and comment to the extent implementation is permitted by the court's injunction. Other changes are only editorial in nature. Accordingly, additional notice and comment is impracticable, unnecessary and contrary to the public interest.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping provisions included in this rule were submitted for approval to the Office of Management and Budget (OMB). Subsequent to the May 28 publication of this rule, the information collection requirements contained in this regulation (see §§ 5.5(a)(1)(ii), 5.5(a)(1)(iv), 5.5(a)(3)(i), 5.5(a)(3)(ii), 5.5(c), 5.15(d)(1), 5.15(d)(3), and 5.15(d)(4)) were approved by OMB under the provisions of 44 U.S.C. 3507 and have been assigned OMB Control Numbers 1215–0140, 1215–0149 and 1215–0017.

Dates of Applicability

The provisions of §§ 5.2 (n) and (o) of this part shall be applicable only as to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after June 28, 1983.

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 5

Administrative practice and procedures, Government contracts, Investigations, Labor, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Accordingly, 29 CFR Part 5, Subpart A, as issued on May 28, 1982 with the necessary textual changes discussed above is herein implemented, as fully set forth below

Signed at Washington, D.C. on this 22d day of April 1983

Raymond J. Donovan,

Secretary of Labor

Robert B. Collyer,

Deputy Under Secretary for Employment Standards

William M. Otter,

Administrator, Wage and Hour Division

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

Sec.

5.1 Purpose and scope.
5.2 Definitions.
5.3 [Reserved]
5.4 [Reserved]
5.5 Contract provisions and related matters.
5.6 [Reserved]
5.7 Reports to the Secretary of Labor.
5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.
5.9 Suspension of funds.
5.10 Restitution, criminal action.
5.11 Disputes concerning payment of wages.
5.12 Debarment proceedings.
5.13 Rulings and interpretations.
5.14 Variations, tolerances, and exemptions from Parts 1 and 2 of this subtitle and this part.
5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.
5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.
5.17 Withdrawal of approval of a training program.

Authority: 40 U.S.C. 276a–276a–7, 40 U.S.C. [illegible] Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. [illegible] and the statutes cited in section 5.1(a) of this part.

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1–7, 46 Stat. 1949, as amended; Pub. L. 74–403, 40 U.S.C. 276a–276a–7).

2. Copeland Act (40 U.S.C. 276c).

3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332).

4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749aff)).

6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199 16 U.S.C. 779e(b)).

8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 463 by Pub. L. 92–318, title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97–424).

13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e)

14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407, 25 U.S.C. 1633(b))

15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).

16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880 renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986 also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372)

19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended, 39 U.S.C. 410(b)(4)(C)).

21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App 402).

23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).

26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).

27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).

30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c–3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979)

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). **Note.**—Repealed December 9, 1969, and labor standards incorporated in sec. 1–1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89–694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87–328) (considered a statute for purposes of the plan but not in the United States Code).

60. Energy Security Act (sec. 175(c), Pub. L. 96–294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§ 5.2 Definitions.

(a) The term "Secretary" includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term "Administrator" means the Administrator of the Wage and Hour Division or the authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division, is designated to act for the Administrator under this Part. Except as otherwise provided in this Part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator in the administration of the statutes listed in § 5.1.

(c) The term "Federal agency" means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in § 5.1.

(d) The term "Agency Head" means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term "Contracting Officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term "labor standards" as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in § 5.1, and the regulations in Parts 1 and 3 of this subtitle and this part.

(g) The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term "contract" means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms "construction", "prosecution", "completion", or "repair" mean all types of work done on a particular building or work at the site thereof (or, under the United States Housing Act of 1937 and the Housing Act of 1949), all work done in the construction or development of the project, including without limitation, altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937 and the Housing Act of 1949, in the construction or development of the project), by persons employed by the contractor or subcontractor.

(k) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term "site of the work" is defined as follows:

(1) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (l)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site".

(2) Except as provided in paragraph (l)(3) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) Not included in the "site of the work" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work". Such permanent, previously established facilities are not a part of the "site of the work", even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice and trainee are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to "apprentices" and "trainees" employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is "employed" regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term "wages" means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon

Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of § 1.6 of this title.

§§ 5.3–5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided,* That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(*1*) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(*2*) The classification is utilized in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215–0140.)

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215–0140.)

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of

Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB control number 1215–0140.)

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH–347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029–005–00014–1), U.S. Government Printing Office, Washington, D.C. 20402.The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB control number 1215–0149.)

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(*1*) That the payroll for the payroll period contains the information required to be maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(*2*) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(*3*) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and Trainees*—(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship

program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of Eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of Part 4 of this title. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment

of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day or which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

§ 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in § 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by § 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to § 5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone

other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§ 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101–11.11 and assigned interagency report control number 1482–DOL–SA.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or forty hours in any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of $10 for each calendar day or workweek in which such individual was required or permitted to work without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory or District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the

recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to Part 7 of this title, and the Wage Appeals Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to Part 8 of this title, and the Board of Service Contract Appeals in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

§ 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

§ 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

§ 5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or § 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR Part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Wage Appeals Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with Part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the

Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Wage Appeals Board.

§ 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in § 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in § 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR Part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under § 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in § 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in § 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Wage Appeals Board pursuant to 29 CFR Part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in § 5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to "any firm, corporation, partnership, or association" in which such contractor or subcontractor has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Wage Appeals Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in § 5.1. No particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrative Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(5) *Referral to the Wage Appeals Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Wage Appeals Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 7.

§ 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to Part 1 of this subtitle, of the rules contained in this part and in Parts 1 and 3, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

§ 5.14 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of Parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contracts of $2,000.00 or less.

(2) Purchases and contracts other than construction contracts in the aggregate amount of $2,500.00 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

(3) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam;

Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(4) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(5) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in § 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In order to prevent undue hardship, a workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards, under the following conditions: (i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of 8 hours per day in a standby or on-call status; and (ii) if the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and (iii) provided that, in determining the daily and the weekly overtime requirements of the Act in any particular workweek of any such employee whose established workweek begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of 8 hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(3) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended. (Approved by the Office of Management and Budget under OMB control numbers 1215–0140 and 1215–0017.)

(4) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of Section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by Section 102 of the Act in accordance with the basic rate of pay as defined in subsection (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.

(A) The employee receives gross wages of not less than $300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract. (Approved by the Office of Management and

Budget under OMB control number 1215–0017.)

§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of § 5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

§ 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

[NOTE: This reprint incorporates editorial corrections that are published in the **Federal Register** of Friday, May 6, 1983]

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GPO 899-451

U. S DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

REQUEST FOR DETERMINATION AND RESPONSE TO REQUEST

(Davis Bacon Act as Amended and Related Statutes)

FOR DEPARTMENT OF LABOR USE

Response To Request

a. ☐ Use area determination issued for this area

_____

_____

b. ☐ The attached decision noted below is applicable to this project

Decision Number

Date of Decision

Expires

Supersedes Decision Number

Approved

Requesting Officer (typed name and signature)

Department, Agency, or Bureau | Phone Number

Date of Request | Est. Advertising Date | Est. Bid Opening Date

Prior Decision Number (if any)

Est. $ Value of Contract
☐ Under ½ Mil. ☐ 1 to 5 Mil.
☐ ½ to 1 Mil. ☐ Over 5 Mil.

Type of Work
☐ Bldg. ☐ Highway
☐ Resid. ☐ Heavy

Location of Project (city or other description)

County | State

Address to which wage determination should be mailed Must be complete and include ZIP Code. (Print or type)

Wage Survey by Agency Attached
☐ YES ☐ NO

Wage Survey by Agency in Progress
☐ YES ☐ NO

Description of Work (Be specific) (Print or type)

CHECK OR LIST CRAFTS NEEDED
(Attach continuation sheet if needed)

___ Asbestos workers
___ Boilermakers
___ Bricklayers
___ Carpenters
___ Cement masons
___ Electricians
___ Glaziers
___ Ironworkers
___ Laborers, *(specify classes)*

_____
_____
_____
_____
_____

___ Lathers
___ Marble & tile setters, terrazzo workers
___ Painters
___ Piledrivermen
___ Plasterers
___ Plumbers
___ Roofers
___ Sheet metal workers
___ Soft floor layers
___ Steamfitters
___ Welders--rate for craft
___ Truck drivers
___ Power equipment operators, *(specify types)*

_____
_____
_____
_____

Other crafts

_____
_____

EXHIBIT 3

EXHIBIT 4

UNITED STATES
DEPARTMENT
OF LABOR
WAGE AND HOUR
DIVISION

NOTICE TO EMPLOYEES

WORKING ON FEDERAL OR FEDERALLY FINANCED CONSTRUCTION PROJECTS

MINIMUM WAGES

You must be paid not less than the wage rate in the schedule posted with this Notice for the kind of work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 8 a day or 40 a week—whichever is greater. There are some exceptions.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PIECE-RATE PAY

If you do not receive proper pay, contact the Contracting Officer as given below:

_____

_____

_____

or you may get in touch with the nearest office of the Wage and Hour Division, U.S. Department of Labor. The Wage and Hour Division has offices in several hundred communities throughout the country. They are listed in the U.S. Government Section of most telephone directories under Department of Labor, Employment Standards Administration.

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

PAYROLL

(For Contractor's Optional Use; See Instruction, Form WH - 347 Inst.)

Form Approved
Budget Bureau No. 44 R1093

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐ | ADDRESS

PAYROLL NO | FOR WEEK ENDING | PROJECT AND LOCATION | PROJECT OR CONTRACT NO

(1) NAME ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE / HOURS WORKED EACH DAY	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS: FICA	WITHHOLDING TAX			OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
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EXHIBIT 5

FORM WH 347 (1968) FORMERLY SOL 184 PURCHASE THIS FORM DIRECTLY FROM THE SUP'T OF DOCUMENTS

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete, that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract, that the classifications set forth therein for each laborer or mechanic conform with the work he performed

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor

4) That

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE

GPO 1981 O - 361-417 (404)

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS

STATEMENT OF COMPLIANCE

Form Approved
Budget Bureau No. 44 R1093

EXHIBIT 6

Date _____

I, _____ (Name of signatory party), _____ (Title) do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____ (Contractor or subcontractor) on the _____ (Building or work); that during the payroll period commencing on the _____ day of _____, 19___, and ending the _____ day of _____, 19___, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ (Contractor or subcontractor) from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948.63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

_____

_____

_____

_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ - In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ - Each Laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS

NAME AND TITLE	SIGNATURE

THE WILFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE

OMB# 2501-0007

Form WH-348 (1/68)

INSTRUCTIONS FOR PREPARATION OF STATEMENT OF COMPLIANCE

This statement of compliance meets needs resulting from the amendment of the Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay fringe benefits as predetermined by the Department of Labor, in addition to payment of the minimum rates. The contractor's obligation to pay fringe benefits may be met by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

The contractor should show on the face of his payroll all monies paid to the employees whether as basic rates or as cash in lieu of fringes. The contractor shall represent in the statement of compliance that he is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions follow:

Contractors who pay all required fringe benefits:

A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall continue to show on the face of his payroll the basic cash hourly rate and overtime rate paid to his employees, just as he has always done. Such a contractor shall check paragraph 4(a) of the statement to indicate that he is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exception shall be noted in Section 4(c).

Contractors who pay no fringe benefits:

A contractor who pays no fringe benefits shall pay to the employee and insert in the straight time hourly rate column of his payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on the basic or regular rate plus the required cash in lieu of fringes at the straight time rate. To simplify computation of overtime, it is suggested that the straight time basic rate and cash in lieu of fringes be separately stated in the hourly rate column, thus $3.25 / .40. In addition, the contractor shall check paragraph 4(b) of the statement to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficinecy directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employees as cash in lieu of fringes, and the hourly amount paid to plans, funds, or programs as fringes.

U.S. GOVERNMENT PRINTING OFFICE: 1968 O—307 141

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $1.25 per pad of 100

EXHIBIT 7

OMB# 2501-0009

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT **RECORD OF EMPLOYEE INTERVIEW** (Labor Standards)	PROJECT NUMBER PROJECT NAME CONTRACTOR OR SUBCONTRACTOR *(Employer)*

1. NAME OF EMPLOYEE		
2. HOME ADDRESS AND ZIP CODE		
3. LAST DATE YOU WORKED ON PROJECT BEFORE TODAY?	NUMBER OF HOURS WORKED ON PROJECT ON THAT DATE?	
4. YOUR HOURLY PAY RATE? $		
5. YOUR JOB CLASSIFICATION(S)?	YES	NO
Apprentice?		
6. YOUR DUTIES?		
7. TOOLS OR EQUIPMENT USED?		
8. PAID AT LEAST TIME AND ONE-HALF FOR ALL HOURS WORKED IN EXCESS OF 8 IN A DAY OR 40 IN A WEEK? *(If overtime premium pay is not required, enter "inapplicable")*	YES	NO
9. EVER THREATENED, INTIMIDATED, OR COERCED INTO GIVING UP ANY PART OF PAY?		
10. DUTIES OBSERVED BY INTERVIEWER		
	YES	NO
Conform to classification:		
11. REMARKS *(Continue on reverse if necessary)*		
12. SIGNATURE OF INTERVIEWER	DATE OF INTERVIEW	

PAYROLL EXAMINATION

13. REMARKS *(Continue on reverse if necessary)*	
14. SIGNATURE OF PAYROLL EXAMINER	DATE

HUD-11 (8-69) Previous edition may be used

GPO 882.243

EXHIBIT 8

Deposit of Funds For The Payment of Wages

TO: Assistant Secretary-FHA Commissioner, HUD

Date: _____
Project No: _____
c/o _____Office Manager Project Name: _____

In order to induce the Assistant Secretary-Federal Housing Commissioner to consider for insurance the mortgage on the project:

Circle One

1. Without awaiting receipt of evidence that the workers named on the attached schedule have received the wages due them, in the respective amounts listed on the attached schedule;

2. Without awaiting administrative determination of the wages which may be due and unpaid for work performed in the construction of the project;

3. Without awaiting the outcome of the appeal which has been filed, or is to be filed, with the Department of Labor by or on behalf of the undersigned contesting the finding of HUD that wages for work performed in the construction of the project are due and unpaid to the workers named on the attached schedule in the respective amounts listed on the schedule;

The attached certified check, payable to HUD, in the amount of $_____(Dollars) is submitted by the undersigned for deposit.

When the amount of unpaid wages has been finally determined by HUD, funds sufficient to pay the total gross amount of the wages shall be held by HUD and the balance of the funds deposited, if any, shall be returned to the undersigned; provided, that if the undersigned appeals or has appealed such final HUD determination, then when the undersigned and HUD have exhausted all administrative and any other rights of appeal, funds sufficient to pay the total gross amount of the wages found due by the highest authority which has ruled in the matter shall be held by HUD, and the balance of the funds deposited, if any, shall be returned to the undersigned.

The wages found due in all cases shall be paid directly to the workers to whom due from the funds submitted herewith and held for that purpose by HUD.

Should HUD be unable to locate any worker within three years from the date hereof, the funds deposited for that purpose shall be retained by HUD and credited to the appropriate U. S. Government account.

_____
Contractor

By _____ _____
(Signature) Typed name and Title)

EXHIBIT 9

U.S. Department of Housing and Urban Development

Special Attention of:
Regional Administrators
Regional Labor Relations Officers
Field Office Labor Relations Directors
Directors, Offices of Regional Housing
Field Office Housing Management Division Directors
Chiefs, Property Disposition Branch

Notice NO. 83-26

Issued: September 21, 1983
Expires: March 31, 1984

Cross References: See Title 41, Chapter 1, Section 1 - 18.705-9, Federal Procurement Regulations

Subject: Handling Davis-Bacon Act Wage Restitution Under the Property Disposition Program

PURPOSE: This Notice clarifies procedures for Davis-Bacon Act wage restitution under the Property Disposition Program.

PROCEDURE:

1. When wage underpayments are found, the contractor shall be requested to see that restitution is made to the employees and/or to plans, funds, or programs for any type of fringe benefits required by the applicable wage determination.

2. If the contractor or subcontractor does not pay all or any part of the wages due the employees, the contracting officer shall withhold from payments due the contractor the estimated amount of underpayments, as well as any estimated liquidated damages due under the Contract Work Hours and Safety Standards Act.

3. If wage underpayments or failure to make restitution continues or if the contractor does not comply with any other contract, statutory, or regulatory requirements, the contracting officer will, upon receiving a recommendation from the Field Office Labor Relations Staff, suspend all contract payments until the violations have ceased.

4. Handling of Wage Restitution Withholdings: When restitution has not been made by the contractor prior to final payment under the contract, the Field Office Labor Relations Staff shall prepare a schedule of underpayments and employees' claims, as explained in Paragraph 7; a Standard Form 1093, Schedule of Withholdings Under Davis-Bacon Act for the total amount of wage restitution to be withheld; and a Standard Form 1081, Voucher and Schedule of Withdrawals and Credits, for the restitution amount listed on the SF-1093. See Attachment 1 for a sample of a SF 1093. See Attachment 2 for a sample of a prepared SF-1081 to be used to transfer wage restitution to the General Accounting Office.

Distribution: W-3-1,

5. Handling of Liquidated Damage Withholdings: When restitution has not been made by the contractor prior to final payment under the contract and liquidated damages have been assessed, the Field Office Labor Relations Staff shall prepare a SF 1081 for the total assessments withheld from payments due to the contractor. See Attachment 3 for a sample of a prepared SF 1081 to be used to transfer liquidated damages withheld.

6. Forwarding Documents: All SF 1081's shall be certified by the certifying officer. The certified SF 1081, SF 1093, and the schedule of underpayments and employees' claims shall be attached to the SF 1034, Public Voucher for Purchases and Services Other than Personal, prepared for final payment to the contractor. The SF 1034 and attachments shall be mailed to the Department of Housing and Urban Development, Accounting Branch, OFA, Washington, D. C. 20410.

7. Schedule of Underpayments and Employees' Claims: This schedule shall list names of underpaid employees, their current addresses, social security numbers, and the amounts due to each worker.

8. Payment of Withheld Wages: The Field Office Labor Relations Staff must inform each underpaid worker of the amount of wages owed to him/her and that it is the responsibility of the worker to contact the U. S. General Accounting Office, AFMD-Claims Group, 441 G Street, N. W., Washington, D. C. 20548 to receive payment of wages.

Justin L. Logsdon
Acting Assistant to the Secretary
for Labor Relations

Attachments (3)
SF 1093 Schedule of Withholdings Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act
SF 1081 Voucher and Schedule of Withdrawals and Credits
SF 1081 (for Liquidated Damages)

The standard forms listed above can be requisitioned from the local General Service Administration.

ATTACHMENT 1

SCHEDULE OF WITHHOLDINGS UNDER THE DAVIS-BACON ACT (40 U.S.C. 276a)

AND/OR

THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 327-333)

To The Claims Division
U.S. General Accounting Office
Washington, D.C. 20548

Contractor or subcontractor charged with violations .....

Prime contractor .....

Contract No. ..... (Date)

Report concerning irregularities transmitted to—

..... (Date)

Deducted from amounts otherwise due the contractor, for deposit to the account "05X6022," covering wages due the employees whose names, social security numbers, and current addresses are listed on the attached schedule, are withholdings pursuant to the following laws:

Davis-Bacon Act ..... $.....

Contract Work Hours and Safety Standards Act ..... $.....

Total ..... $.....

SF 1081

Forwarded herewith is ~~check~~ No. ....., dated .....

for $.....

.....
(Disbursing officer or other administrative official)

Standard Form 1093
October 1971
4 GAO 46
1093-105

ATTACHMENT 2

STANDARD FORM 1081
Revised September 1982
Department of the Treasury
I TFRM 2-2500

VOUCHER AND SCHEDULE OF WITHDRAWALS AND CREDITS

Transaction Date	
Document No.	183401

CHARGE AND CREDIT WILL BE REPORTED ON CUSTOMER AGENCY STATEMENT OF TRANSACTIONS FOR ACCOUNTING PERIOD ENDING Leave Blank For Accounting Use

CUSTOMER AGENCY		BILLING AGENCY	
Agency Location Code (ALC)	Customer Agency Voucher No.	Agency Location Code (ALC)	Billing Agency Voucher No.
86-09-0300			
DEPARTMENT of Housing and Urban Development BUREAU Federal Housing Administration ADDRESS Office of Finance and Accounting Washington, D. C. 20410		DEPARTMENT BUREAU ADDRESS	

SUMMARY		SUMMARY	
APPROPRIATION, FUND, OR RECEIPT SYMBOL	AMOUNT	APPROPRIATION, FUND, OR RECEIPT SYMBOL	AMOUNT
86 x 4070, Federal Housing Administration Fund	$xxx.xx	05 x 6022, Wages of Employees of Contractors	$xxx.xx
(MUST AGREE WITH BILLING AGENCY TOTAL) TOTAL	$xxx.xx	(MUST AGREE WITH CUSTOMER AGENCY TOTAL) TOTAL	$xxx.xx

Details of charges or reference to attached supporting documents

FHA Case Number _____

Above amount represents Wage Restitution Withholdings under HUD's Property Disposition Program. See attached SF 1093 and supporting schedule showing names of employees and amounts related to each employee.

I certify that the above is correct and proper.

(name) (date)
Signature of Field Office Certifying Officer

Telephone number of Certifying Officer

BILLING AGENCY CONTACT: Leave Blank For Accounting Use
PREPARED BY _____
APPROVED BY _____
TELEPHONE NO. _____

CERTIFICATION OF CUSTOMER OFFICE

I certify that the items listed herein are correct and proper for payment from and to the appropriation(s) designated.

Leave Blank For Accounting Use

(Date) (Authorized administrative or certifying officer)

(Telephone No.)

NSN 7540-00-634-4234
PREVIOUS EDITION NOT USABLE

Original Forward To Customer For Payment

ATTACHMENT 3

STANDARD FORM 1081
Revised September 1982
Department of the Treasury
I TFRM 2 2500

VOUCHER AND SCHEDULE OF WITHDRAWALS AND CREDITS

Transaction Date

CHARGE AND CREDIT WILL BE REPORTED ON CUSTOMER AGENCY STATEMENT OF TRANSACTIONS FOR ACCOUNTING PERIOD ENDING Leave Blank For Accounting Use

Document No. 183401

CUSTOMER AGENCY		BILLING AGENCY	
Agency Location Code (ALC)	Customer Agency Voucher No.	Agency Location Code (ALC)	Billing Agency Voucher No.
86-09-0300		86-01-0300	—

DEPARTMENT of Housing and Urban Development
BUREAU Federal Housing Administration
ADDRESS Office of Finance and Accounting
Washington, D. C. 20410

DEPARTMENT of Housing and Urban Development
BUREAU Office of the Secretary
ADDRESS Office of Finance and Accounting
Washington, D. C. 20410

SUMMARY		SUMMARY	
APPROPRIATION, FUND, OR RECEIPT SYMBOL	AMOUNT	APPROPRIATION, FUND, OR RECEIPT SYMBOL	AMOUNT
86 x 4070, Federal Housing Administration Fund	$xxx.xx	86 1030, Fines, Penalties and Forfeitures, Immigration and Labor Laws	$xxx.xx
(MUST AGREE WITH BILLING AGENCY TOTAL) TOTAL	$xxx.xx	(MUST AGREE WITH CUSTOMER AGENCY TOTAL) TOTAL	$xxx.xx

Details of charges or reference to attached supporting documents

FHA Case Number _____

Above amount represents Liquidated Damages Withheld Under the Property Disposition Program

I certify that the above is correct and proper.

(name) (date)
Signature of Field Office Certifying Officer

Telephone number of Certifying Officer

BILLING AGENCY CONTACT Leave Blank For Accounting Use
PREPARED BY _____
APPROVED BY _____
TELEPHONE NO _____

CERTIFICATION OF CUSTOMER OFFICE

I certify that the items listed herein are correct and proper for payment from and to the appropriation(s) designated.

Leave Blank For Accounting Use

(Date) (Authorized administrative or certifying officer)

(Telephone No.)

NSN 7540-00-634-4234
PREVIOUS EDITION NOT USABLE

Section IV

Civil Rights Requirements

TITLE III-PROHIBITION OF DISCRIMINATION BASED ON AGE

SHORT TITLE

SEC.301. The provisions of this title may be cited as the "Age Discrimination Act of 1975".

STATEMENT OF PURPOSE

SEC.302. It is the purpose of this title to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C.1221 et seq.).

PROHIBITION OF DISCRIMINATION

SEC.303. Pursuant to regulations prescribed under section 304, and except as provided by section 304(b) and section 304(c), no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

REGULATIONS

SEC.304.(a)(1) Not later than one year after the transmission of the report required by section 307(b), or two and one-half years after the date of the enactment of this Act, whichever occurs first, the Secretary of Health, Education, and Welfare shall publish in the Federal Register proposed general regulations to carry out the provisions of section 303.

(2)(A) The Secretary shall not publish such proposed general regulations until the expiration of a period comprised of -

(i) the forty-five day period specified in section 307(e); and

(ii)an additional forty-five day period, immediately following the period described in clause (i), during which any committee of the Congress having jurisdiction over the subject matter involved may conduct hearings with respect to the report which the Commission is required to transmit under section 307(d), and with respect to the comments and recommendations submitted by Federal departments and agencies under section 307(e).

(B) The forty-five day period specified in subparagraph (A)(ii) shall include only days during which both Houses of the Congress are in session.

(3) Not later than ninety days after the Secretary publishes proposed regulations under paragraph (1), the Secretary shall publish in the Federal Register final general regulations to carry out the provisions of section 303, after taking into consideration any comments received by the Secretary with respect to the regulations proposed under paragraph (1).

(4) Not later than ninety days after the Secretary publishes final general regulations under paragraph (a)(3), the head of each Federal department or agency which extends Federal financial assistance to any program or activity by way of grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to the Secretary and publish in the Federal Register proposed regulations to carry out the provisions of section 303 and to provide appropriate investigative,conciliation, and enforcement procedures. "Such regulations shall be consistent with the final general regulations issued by the Secretary, and shall not become effective until approved by the Secretary."

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section shall be effective before July 1, 1979.

(b)(1) It shall not be a violation of any provision of this title, or of any regulation issued under this title, for any person to take any action otherwise prohibited by the provisions of section 303 if, in the program or activity involved -

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this title shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.

(c)(1) Except with respect to any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (29 U.S.C. 801,et seq.), as amended, nothing in this title shall be construed to authorize action under this title by any Federal department or agency with respect to any employment practice of any employer, employment agency, or labor-management joint apprenticeship training program.

(2) Nothing in this title shall be construed to amend or modify the Age Discrimination in Employment Act of 1967 (29 U.S.C.621-634), as amended, or to affect the rights or responsibilities of any person or party pursuant to such Act.

ENFORCEMENT

SEC.305.(a) The head of any Federal department or agency who prescribes regulations under Section 304 may seek to achieve compliance with any such regulation-

(1) by terminating, or refusing to grant assistance under the program or activity involved to any recipient with respect to whom there has been an express finding on the record, after reasonable notice and opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

(b) Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) shall be limited to the particular political entity or other recipient with respect to which a finding has been made under subsection (a)(1). Any such termination or refusal shall be limited in its effect to the particular program or activity, or part of such program or activity, with respect to which such finding has been made. No such termination or refusal shall be based in whole or in part on any finding with respect to any program or activity which does not receive Federal financial assistance. "Whenever the head of any Federal department or agency who prescribes regulations under section 304 withholds funds pursuant to subsection (a), he may, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or non-profit private organization or agency, or State or political subdivision thereof, which demonstrates the ability to acheive the goals of the Federal statute authorizing the program or activity while complying with regula-

tions issued under section 304'.

(c) No action may be taken under subsection (a) until the head of the Federal department or agency involved has advised the appropriate person of the failure to comply with the regulation involved and has determined that compliance cannot be secured by voluntary means.

(d) In the case of any action taken under subjection (a), the head of the Federal department or agency involved shall transmit a written report of the circumstances and grounds of such action to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved. No such action shall take effect until thirty days after the transmission of any such report.

(e)(1) When any interested person brings an action in any United States district court for the district in which the defendant is found or transacts business to enjoin a violation of this Act by any program or activity receiving Federal financial assistance, such interested person shall give notice by registered mail not less than 30 days prior to the commencement of that action to the Secretary of Health, Education and Welfare, the Attorney General of the United States, and the person against whom the action is directed. Such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing plaintiff.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be requested, the court in which the action will be brought, and whether or not attorney's fees are being demanded in the event that the plaintiff prevails. No action described in paragraph (1) shall be brought (A) if at the time the action is brought the same alleged violation by the same defendant is the subject of a pending action in any court of the United States; or (B) if administrative remedies have not been exhausted.

(f) With respect to actions brought for relief based on an alleged violation of the provisions of this title, administrative remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first.

JUDICIAL REVIEW

SEC.306. (a) Any action by any Federal department or agency under section 305 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by any such department or agency on other grounds.

(b) In the case of any action by any Federal department or agency under section 305 which is not otherwise subject to judicial review, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with the provisions of chapter 7 of title 5, United States Code. For purposes of this subsection, any such action shall not be considered committed to unreviewable agency discretion within the meaning of section 701 (a) (2) of such title.

STUDY OF DISCRIMINATION BASED ON AGE

SEC.307.(a) The Commission on Civil Rights shall (1) undertake a study of unreasonable discrimination based on age in programs and activities receiving Federal financial assistance; and (2) identify with particularity any such federally assisted program or activity in which there is found evidence of persons who are otherwise qualified being, on the basis of age, excluded from participation in, denied the benefits of, or subjected to discrimination under such program or activity.

(b) As part of the study required by this section, the Commission shall conduct public hearings to elicit the views of interested parties, including Federal departments and agencies, on issues relating to age discrimination in programs and activities receiving Federal financial assistance, and particularly with respect to the reasonableness of distinguishing, on the basis of age, among potential participants in, or beneficiaries of, specific federally assisted programs.

(c) The Commission is authorized to obtain, through grant or contract, analyses, research and studies by independent experts of issues relating to age discrimination and to publish the results thereof. For purposes of the study required by this section, the Commission may accept and utilize the services of voluntary or uncompensated personnel, without regard to the provisions of section 105 (b) of the Civil Rights Act of 1957 (42 U.S.C. 1975d (b)).

(d) Not later than "two years" after the date of the enactment of this Act, the Commission shall transmit a report of its findings and its recommendations for statutory changes (if any) and administrative action, including suggested general regulations, to the Congress and to the President and shall provide a copy of its report to the head of each Federal department and agency with respect to which the Commission makes findings or recommendations. The Commission is authorized to provide, upon request, information and technical assistance regarding its findings and recommendations to Congress, to the President, and to the head of Federal departments and agencies for a ninety day period following the transmittal of its report.".

(e) Not later than forty-five working days after receiving a copy of the report required by subsection (d) each Federal department or agency with respect to which the Commission makes findings or recommendations shall submit its comments and recommendations regarding such report to the President and to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives.

(f) The head of each Federal department or agency shall cooperate in all respects with the Commission with respect to the study required by subsection (a), and shall provide to the Commission such data, reports, and documents in connection with the subject matter of such study as the Commission may request.

(g) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

REPORT

"SEC.308. (a) Not later than December 31 of each year (beginning in 1979), the head of each Federal department or agency shall submit to the Secretary of Health, Education and Welfare a report (1) describing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 303; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 303.

(b) Not later than March 31 of each year (beginning in 1980) the Secretary of Health, Education, and Welfare shall compile the reports made pursuant to subsection (a) and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of section 303.

DEFINITIONS

SEC.309 For purposes of this title -

(1) the term "Commission" means the Commission on Civil Rights;

(2) the term "Secretary" means the Secretary of Health, Education, and Welfare; and

(3) the term "Federal department or agency" means any agency as defined in section 551 of title 5, United States Code, and includes the United States Postal Service and the Postal Rate Commission.

Approved November 28, 1975

Rehabilitation Act of 1973
Public Law 93-112

NONDISCRIMINATION UNDER FEDERAL GRANTS

Sec. 504. No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

Approved September 26, 1973.

COMMUNITY DEVELOPMENT REPORTER

BASIC FEDERAL DOCUMENTS

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

USA Standard Specifications for

Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped

USA Standard Specifications for

Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped

1. Scope and Purpose

1.1 Scope

1.1.1 This standard applies to all buildings and facilities used by the public. It applies to temporary or emergency conditions as well as permanent conditions. It does not apply to private residences.

1.1.2 This standard is concerned with non-ambulatory disabilities, semi-ambulatory disabilities, sight disabilities, hearing disabilities, disabilities of incoordination, and aging.[1]

1.2 Purpose. This standard is intended to make all buildings and facilities used by the public accessible to, and functional for, the physically handicapped, to, through, and within their doors, without loss of function, space, or facility where the general public is concerned. It supplements existing American Standards,* and reflects great concern for safety of life and limb. In cases of practical difficulty, unnecessary hardship, or extreme differences, administrative authorities may grant exceptions from the literal requirements of this standard or permit the use of other methods or materials, but only when it is clearly evident that equivalent facilitation and protection are thereby secured.

2. Definitions

2.1 Non-ambulatory Disabilities. Impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheelchairs.

2.2 Semi-ambulatory Disabilities. Impairments that cause individuals to walk with difficulty or insecurity. Individuals using braces or crutches, amputees, arthritics, spastics, and those with pulmonary and cardiac ills may be semi-ambulatory.

2.3 Sight Disabilities. Total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to danger.

2.4 Hearing Disabilities. Deafness or hearing handicaps that might make an individual insecure in public areas because he is unable to communicate or hear warning signals.

2.5 Disabilities of Incoordination. Faulty coordination or palsy from brain, spinal, or peripheral nerve injury.

2.6 Aging. Those manifestations of the aging processes that significantly reduce mobility, flexibility, coordination, and perceptiveness but are not accounted for in the aforementioned categories.

2.7 Standard. When this term appears in small letters and is not preceded by the word "American," it is descriptive and does not refer to an American Standard* approved by ASA; for example, a "standard" wheelchair is one characterized as standard by the manufacturers.

2.8 Fixed Turning Radius, Wheel to Wheel. The tracking of the caster wheels and large wheels of a wheelchair when pivoting on a spot.

2.9 Fixed Turning Radius, Front Structure to Rear Structure. The turning radius of a wheelchair, left front-foot platform to right rear wheel, or right front-foot platform to left rear wheel, when pivoting on a spot.

2.10 Involved (Involvement). A portion or portions of the human anatomy or physiology, or both, that have a loss or impairment of normal function as a result of genesis, trauma, disease, inflammation, or degeneration.

2.11 Ramps, Ramps with Gradients. Because the term "ramp" has a multitude of meanings and uses, its use in this text is clearly defined as ramps with gradients (or ramps with slopes) that deviate from what would otherwise be considered the normal level. An exterior ramp, as distinguished from a "walk," would be considered an appendage to a building leading to a level above or below existing ground level. As such, a ramp shall meet certain requirements similar to those imposed upon stairs.

2.12 Walk, Walks. Because the terms "walk" and "walks" have a multitude of meanings and uses, their use in this text is clearly defined as a predetermined, prepared-surface, exterior pathway leading to or from a building or facility, or from one exterior area to another, placed on the existing ground level and not deviating from the level of the existing ground immediately adjacent.

2.13 Appropriate Number. As used in this text, appropriate number means the number of a specific item that would be necessary, in accord with the purpose and function of a building or facility, to accommodate individuals with specific disabilities in proportion to the anticipated number of individuals with disabilities who would use a particular building or facility.

[1] See definitions in Section 2.

*All American Standards are now designated USA Standards.

EXAMPLE: Although these specifications shall apply to all buildings and facilities used by the public, the numerical need for a specific item would differ, for example, between a major transportation terminal, where many individuals with diverse disabilities would be continually coming and going, an office building or factory, where varying numbers of individuals with disabilities of varying manifestations (in many instances, very large numbers) might be employed or have reason for frequent visits, a school or church, where the number of individuals may be fixed and activities more definitive, and the many other buildings and facilities dedicated to specific functions and purposes.

NOTE: Disabilities are specific and where the individual has been properly evaluated and properly oriented and where architectural barriers have been eliminated, a specific disability does not constitute a handicap. It should be emphasized that more and more of those physically disabled are becoming *participants*, rather than spectators, in the fullest meaning of the word.

3. General Principles and Considerations

3.1 Wheelchair Specifications. The collapsible-model wheelchair of tubular metal construction with plastic upholstery for back and seat is most commonly used. The standard model of all manufacturers falls within the following limits, which were used as the basis of consideration:

(1) Length: 42 inches
(2) Width, when open: 25 inches
(3) Height of seat from floor: 19½ inches
(4) Height of armrest from floor: 29 inches
(5) Height of pusher handles (rear) from floor: 36 inches
(6) Width, when collapsed: 11 inches

3.2 The Functioning of a Wheelchair

3.2.1 The fixed turning radius of a standard wheelchair, wheel to wheel, is 18 inches. The fixed turning radius, front structure to rear structure, is 31.5 inches.

3.2.2 The average turning space required (180 and 360 degrees) is 60 x 60 inches.

NOTE: Actually, a turning space that is longer than it is wide, specifically, 63 x 56 inches, is more workable and desirable. In an area with two open ends, such as might be the case in a corridor, a minimum of 54 inches between two walls would permit a 360 degree turn.

3.2.3 A minimum width of 60 inches is required for two individuals in wheelchairs to pass each other.

3.3 The Adult Individual Functioning in a Wheelchair[2]

3.3.1 The average unilateral vertical reach is 60 inches and ranges from 54 inches to 78 inches.

3.3.2 The average horizontal working (table) reach is 30.8 inches and ranges from 28.5 inches to 33.2 inches.

3.3.3 The bilateral horizontal reach, both arms extended to each side, shoulder high, ranges from 54 inches to 71 inches and averages 64.5 inches.

3.3.4 An individual reaching diagonally, as would be required in using a wall-mounted dial telephone or towel dispenser, would make the average reach (on the wall) 48 inches from the floor.

3.4 The Individual Functioning on Crutches[3]

3.4.1 On the average, individuals 5 feet 6 inches tall require an average of 31 inches between crutch tips in the normally accepted gaits.[4]

3.4.2 On the average, individuals 6 feet 0 inches tall require an average of 32.5 inches between crutch tips in the normally accepted gaits.[4]

4. Site Development[5]

4.1 Grading. The grading of ground, even contrary to existing topography, so that it attains a level with a normal entrance will make a facility accessible to individuals with physical disabilities.

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[2] Extremely small, large, strong, or weak and involved individuals could fall outside the ranges in 3.3.1, 3.3.2, 3.3.3, and their reach could differ from the figure given in 3.3.4. However, these reaches were determined using a large number of individuals who were functionally trained, with a wide range in individual size and involvement.

[3] Most individuals ambulating on braces or crutches, or both, or on canes are able to manipulate within the specifications prescribed for wheelchairs, although doors present quite a problem at times. However, attention is called to the fact that a crutch tip extending laterally from an individual is not obvious to others in heavily trafficked areas, certainly not as obvious or protective as a wheelchair and is, therefore, a source of vulnerability.

[4] Some cerebral palsied individuals, and some severe arthritics, would be extreme exceptions to 3.4.1 and 3.4.2.

[5] Site development is the most effective means to resolve the problems created by topography, definitive architectural designs or concepts, water table, existing streets, and atypical problems, singularly or collectively, so that aggress, ingress, and egress to buildings by physically disabled can be facilitated while preserving the desired design and effect of the architecture.

4.2 Walks

4.2.1 Public walks should be at least 48 inches wide and should have a gradient not greater than 5 percent.[6]

4.2.2 Such walks shall be of a continuing common surface, not interrupted by steps or abrupt changes in level.

4.2.3 Wherever walks cross other walks, driveways, or parking lots they should blend to a common level.[7]

NOTE: 4.1 and 4.2, separately or collectively, are greatly aided by terracing, retaining walls, and winding walks allowing for more gradual incline, thereby making almost any building accessible to individuals with permanent physical disabilities, while contributing to its esthetic qualities.

4.2.4 A walk shall have a level platform at the top which is at least 5 feet by 5 feet, if a door swings out onto the platform or toward the walk. This platform shall extend at least 1 foot beyond each side of the doorway.

4.2.5 A walk shall have a level platform at least 3 feet deep and 5 feet wide, if the door does not swing onto the platform or toward the walk. This platform shall extend at least 1 foot beyond each side of the doorway.

4.3 Parking Lots

4.3.1 Spaces that are accessible and approximate to the facility should be set aside and identified for use by individuals with physical disabilities.

4.3.2 A parking space open on one side, allowing room for individuals in wheelchairs or individuals on braces and crutches to get in and out of an automobile onto a level surface, suitable for wheeling and walking, is adequate.

4.3.3 Parking spaces for individuals with physical disabilities when placed between two conventional diagonal or head-on parking spaces should be 12 feet wide.

4.3.4 Care in planning should be exercised so that individuals in wheelchairs and individuals using braces and crutches are not compelled to wheel or walk behind parked cars.

4.3.5 Consideration should be given the distribution of spaces for use by the disabled in accordance with the frequency and persistency of parking needs.

4.3.6 Walks shall be in conformity with 4.2.

[6]It is essential that the gradient of walks and driveways be less than that prescribed for ramps, since walks would be void of handrails and curbs and would be considerably longer and more vulnerable to the elements. Walks of near maximum grade and considerable length should have level areas at intervals for purposes of rest and safety. Walks or driveways should have a nonslip surface.

[7]This specification does not require the elimination of curbs, which, particularly if they occur at regular intersections, are a distinct safety feature for all of the handicapped, particularly the blind. The preferred method of meeting the specification is to have the walk incline to the level of the street. However, at principal intersections, it is vitally important that the curb run parallel to the street, up to the point where the walk is inclined, at which point the curb would turn in and gradually meet the level of the walk at its highest point. A less preferred method would be to gradually bring the surface of the driveway or street to the level of the walk. The disadvantage of this method is that a blind person would not know when he has left the protection of a walk and entered the hazards of a street or driveway.

5. Buildings

5.1 Ramps with Gradients. Where ramps with gradients are necessary or desired, they shall conform to the following specifications:

5.1.1 A ramp shall not have a slope greater than 1 foot rise in 12 feet, or 8.33 percent, or 4 degrees 50 minutes.

5.1.2 A ramp shall have handrails on at least one side, and preferably two sides, that are 32 inches in height, measured from the surface of the ramp, that are smooth, that extend 1 foot beyond the top and bottom of the ramp, and that otherwise conform with American Standard* Safety Code for Floor and Wall Openings, Railings, and Toe Boards, A12-1932.

NOTE 1: Where codes specify handrails to be of heights other than 32 inches, it is recommended that two sets of handrails be installed to serve all people. Where major traffic is predominantly children, particularly physically disabled children, extra care should be exercised in the placement of handrails, in accordance with the nature of the facility and the age group or groups being serviced.

NOTE 2: Care should be taken that the extension of the handrail is not in itself a hazard. The extension may be made

5.1.3 A ramp shall have a surface that is nonslip.

5.1.4 A ramp shall have a level platform at the top which is at least 5 feet by 5 feet, if a door swings out onto the platform or toward the ramp. This platform shall extend at least 1 foot beyond each side of the doorway.

5.1.5 A ramp shall have a level platform at least 3 feet deep and 5 feet wide, if the door does not swing onto the platform or toward the ramp. This platform shall extend at least 1 foot beyond each side of the doorway.

5.1.6 Each ramp shall have at least 6 feet of straight clearance at the bottom.

5.1.7 Ramps shall have level platforms at 30-foot intervals for purposes of rest and safety and shall have level platforms wherever they turn.

5.2 Entrances

5.2.1 At least one primary entrance to each building shall be usable by individuals in wheelchairs.

NOTE: Because entrances also serve as exits, some being particularly important in case of an emergency, and because the proximity of such exits to all parts of buildings and facilities, in accordance with their design and function, is essential (see 112 and 2000 through 2031 of American Standard* Building Exits Code, A9.1-1953) it is preferable that all or most entrances (exits) should be accessible to, and usable by, individuals in wheelchairs and individuals with other forms of physical disability herein applicable.

5.2.2 At least one entrance usable by individuals in wheelchairs shall be on a level that would make the elevators accessible.

5.3 Doors and Doorways

5.3.1 Doors shall have a clear opening of no less than 32 inches when open and shall be operable by a single effort.

NOTE 1: Two-leaf doors are not usable by those with disabilities defined in 2.1, 2.2, and 2.5 unless they operate by a single effort, or unless one of the two leaves meets the requirement of 5.3.1.

NOTE 2: It is recommended that all doors have kick plates extending from the bottom of the door to at least 16 inches from the floor, or be made of a material and finish that would safely withstand the abuse they might receive from canes, crutches, wheelchair foot-platforms, or wheelchair wheels.

5.3.2 The floor on the inside and outside of each doorway shall be level for a distance of 5 feet from the door in the direction the door swings and shall extend 1 foot beyond each side of the door.

5.3.3 Sharp inclines and abrupt changes in level shall be avoided at doorsills. As much as possible, thresholds shall be flush with the floor.

NOTE 1: Care should be taken in the selection, placement, and setting of door closers so that they do not prevent the use of doors by the physically disabled. Time-delay door closers are recommended.

NOTE 2: Automatic doors that otherwise conform to 5.3.1, 5.3.2, and 5.3.3 are very satisfactory.

NOTE 3: These specifications apply both to exterior and interior doors and doorways.

5.4 Stairs. Stairs shall conform to American Standard A9.1-1953, with the following additional considerations:

5.4.1 Steps in stairs that might require use by those with disabilities defined in 2.2 and 2.5 or by the aged shall not have abrupt (square) nosing. (See Fig. 1.)

NOTE: Individuals with restrictions in the knee, ankle, or hip, with artificial legs, long leg braces, or comparable conditions cannot, without great difficulty and hazard, use steps with nosing as illustrated in Fig. 1a, but can safely and with minimum difficulty use steps with nosing as illustrated in Fig. 1b.

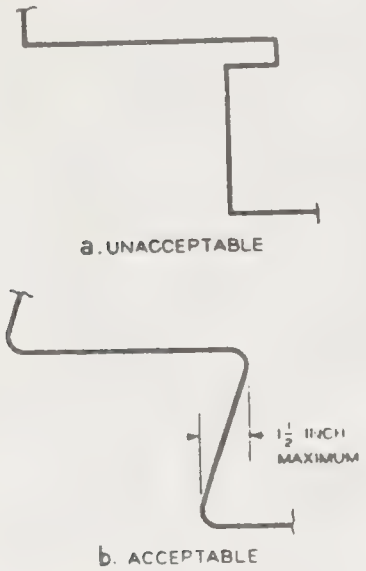


Fig. 1
Steps

5.4.2 Stairs shall have handrails 32 inches high as measured from the tread at the face of the riser.

NOTE: Where codes specify handrails to be at heights other than 32 inches, it is recommended that two sets of handrails be installed to serve all people. Where traffic is predominantly children, particularly physically disabled children, extra care should be exercised in the placement of handrails in accordance with the nature of the facility and the age group or groups being serviced. Dual handrails may be necessary.

5.4.3 Stairs shall have at least one handrail that extends at least 18 inches beyond the top step and beyond the bottom step.

NOTE: Care should be taken that the extension of the handrails is not in itself a hazard. The extension *may* be made on the side of a continuing wall.

5.4.4 Steps should, wherever possible, and in conformation with existing step formulas, have risers that do not exceed 7 inches.

5.5 Floors

5.5.1 Floors shall have a surface that is nonslip.

5.5.2 Floors on a given story shall be of a common level throughout or be connected by a ramp in accord with 5.1.1 through 5.1.6, inclusive.

EXAMPLE 1: There shall not be a difference between the level of the floor of a corridor and the level of the floor of the toilet rooms.

EXAMPLE 2: There should not be a difference between the level of the floor of a corridor and the level of a meeting room, dining room, or any other room, unless proper ramps are provided.

5.6 Toilet Rooms. It is essential that an appropriate number[8] of toilet rooms, in accordance with the nature and use of a specific building or facility, be made accessible to, and usable by, the physically handicapped.

5.6.1 Toilet rooms shall have space to allow traffic of individuals in wheelchairs, in accordance with 3.1, 3.2, and 3.3.

5.6.2 Toilet rooms shall have at least one toilet stall that—

(1) Is 3 feet wide

(2) Is at least 4 feet 8 inches, preferably 5 feet, deep

(3) Has a door (where doors are used) that is 32 inches wide and swings out

(4) Has handrails on each side, 33 inches high and parallel to the floor, 1½ inches in outside diameter, with 1½ inches clearance between rail and wall, and fastened securely at ends and center

(5) Has a water closet with the seat 20 inches from the floor

NOTE: The design and mounting of the water closet is of considerable importance. A wall-mounted water closet with a narrow understructure that recedes sharply is most desirable. If a floor-mounted water closet must be used, it should not have a front that is wide and perpendicular to the floor at the front of the seat. The bowl should be shallow at the front of the seat and turn backward more than downward to allow the individual in a wheelchair to get close to the water closet with the seat of the wheelchair.

5.6.3 Toilet rooms shall have lavatories with narrow aprons, which when mounted at standard height are usable by individuals in wheelchairs; or shall have lavatories mounted higher, when particular designs demand, so that they are usable by individuals in wheelchairs.

NOTE: It is important that drain pipes and hot-water pipes under a lavatory be covered or insulated so that a wheelchair individual without sensation will not burn himself.

5.6.4 Some mirrors and shelves shall be provided above lavatories at a height as low as possible and no higher than 40 inches above the floor, measured from the top of the shelf and the bottom of the mirror.

5.6.5 Toilet rooms for men shall have wall-mounted urinals with the opening of the basin 19 inches from the floor, or shall have floor-mounted urinals that are on level with the main floor of the toilet room.

5.6.6 Toilet rooms shall have an appropriate number[8] of towel racks, towel dispensers, and other dispensers and disposal units mounted no higher than 40 inches from the floor.

5.7 Water Fountains. An appropriate number[8] of water fountains or other water-dispensing means shall be accessible to, and usable by, the physically disabled.

5.7.1 Water fountains or coolers shall have up-front spouts and controls.

5.7.2 Water fountains or coolers shall be hand-operated or hand- and foot-operated. (See also American Standard Specifications for Drinking Fountains, Z4.2-1942.)

NOTE 1: Conventional floor-mounted water coolers can be serviceable to individuals in wheelchairs if a small fountain is mounted on the side of the cooler 30 inches above the floor.

NOTE 2: Wall-mounted, hand-operated coolers of the latest design, manufactured by many companies, can serve the able-bodied and the physically disabled equally well when the cooler is mounted with the basin 36 inches from the floor.

NOTE 3: Fully recessed water fountains are not recommended.

NOTE 4: Water fountains should not be set into an alcove unless the alcove is wider than a wheelchair. (See 3.1.)

5.8 Public Telephones. An appropriate number[8] of public telephones should be made accessible to, and usable by, the physically disabled.

NOTE: The conventional public telephone booth is not usable by most physically disabled individuals. There are many ways in which public telephones can be made accessible and usable. It is recommended that architects and builders confer with the telephone company in the planning of the building or facility.

5.8.1 Such telephones should be placed so that the dial and the handset can be reached by individuals in wheelchairs, in accordance with 3.3.

5.8.2 An appropriate number[8] of public telephones should be equipped for those with hearing disabilities and so identified with instructions for use.

NOTE: Such telephones can be used by everyone.

5.9 Elevators. In a multiple-story building, elevators are essential to the successful functioning of physically disabled individuals. They shall conform to the following requirements:

5.9.1 Elevators shall be accessible to, and usable by, the physically disabled on the level that they use to enter the building, and at all levels normally used by the general public.

5.9.2 Elevators shall allow for traffic by wheelchairs, in accordance with 3.1, 3.2, 3.3 and 5.3.

5.10 Controls. Switches and controls for light, heat, ventilation, windows, draperies, fire alarms, and all similar controls of frequent or essential use, shall be placed within the reach of individuals in wheelchairs. (See 3.3.)

[8] See 2.13.

5.11 Identification. Appropriate identification of specific facilities within a building used by the public is particularly essential to the blind.

5.11.1 Raised letters or numbers shall be used to identify rooms or offices.

5.11.2 Such identification should be placed on the wall, to the right or left of the door, at a height between 4 feet 6 inches and 5 feet 6 inches, measured from the floor, and preferably at 5 feet.

5.11.3 Doors that are not intended for normal use, and that might prove dangerous if a blind person were to exit or enter by them, should be made quickly identifiable to the touch by knurling the door handle or knob. (See Fig. 2.)[9]

EXAMPLE: Such doors might lead to loading platforms, boiler rooms, stages, fire escapes, etc.

5.12 Warning Signals

5.12.1 Audible warning signals shall be accompanied by simultaneous visual signals for the benefit of those with hearing disabilities.

5.12.2 Visual signals shall be accompanied by simultaneous audible signals for the benefit of the blind.

5.13 Hazards. Every effort shall be exercised to obviate hazards to individuals with physical disabilities.

5.13.1 Access panels or manholes in floors, walks, and walls can be extremely hazardous, particularly when in use, and should be avoided.

5.13.2 When manholes or access panels are open and in use, or when an open excavation exists on a site, particularly when it is approximate to normal pedestrian traffic, barricades shall be placed on all open sides, at least 8 feet from the hazard, and warning devices shall be installed in accord with 5.12.2.

5.13.3 Low-hanging door closers that remain within the opening of a doorway when the door is open, or that protrude hazardously into regular corridors or traffic ways when the door is closed, shall be avoided.

5.13.4 Low-hanging signs, ceiling lights, and similar objects or signs and fixtures that protrude into regular corridors or traffic ways shall be avoided. A minimum height of 7 feet, measured from the floor, is recommended.

[9] Knurling may also be accomplished by the use of an acceptable plastic, abrasive coating.

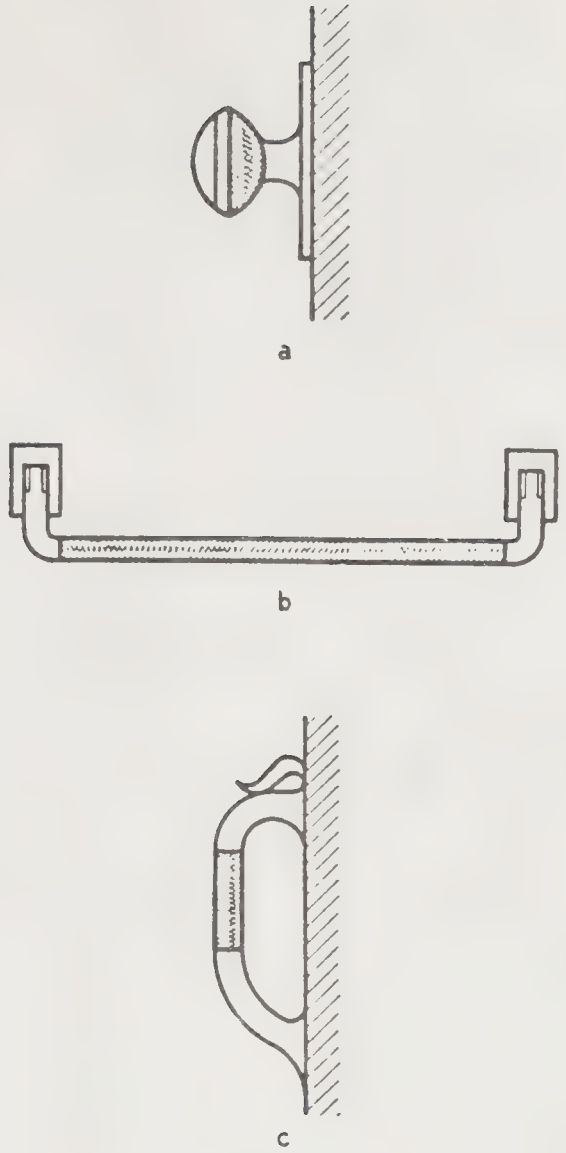


Fig. 2
Knurled Door Handles and Knobs

5.13.5 Lighting on ramps shall be in accord with 1201, 1202, 1203, and 1204 of American Standard* A9.1-1953.

5.13.6 Exit signs shall be in accord with 1205 of American Standard*A9.1-1953, except as modified by 5.11 of this standard.

*All American Standards are now designated USA Standards

Public Law 90-284
90th Congress, H. R. 2516
April 11, 1968

An Act

To prescribe penalties for certain acts of violence or intimidation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

• • •

TITLE VIII—FAIR HOUSING

POLICY

SEC. 801. It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

DEFINITIONS

SEC. 802. As used in this title—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, or 806.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

EFFECTIVE DATES OF CERTAIN PROHIBITIONS

SEC. 803. (a) Subject to the provisions of subsection (b) and section 807, the prohibitions against discrimination in the sale or rental of housing set forth in section 804 shall apply:

(1) Upon enactment of this title, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to the date of enactment of this title;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to the date of enactment of this title: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b).

(b) Nothing in section 804 (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 804(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) For the purposes of subsection (b), a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 804. As made applicable by section 803 and except as exempted by sections 803(b) and 807, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 805. After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this sec-

tion shall impair the scope or effectiveness of the exception contained in section 803(b).

DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

SEC. 806. After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, or national origin.

EXEMPTION

SEC. 807. Nothing in this title shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this title prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

ADMINISTRATION

SEC. 808. (a) The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) The Department of Housing and Urban Development shall be provided an additional Assistant Secretary. The Department of Housing and Urban Development Act (Public Law 89-174, 79 Stat. 667) is hereby amended by—

(1) striking the word "four," in section 4(a) of said Act (79 Stat. 668; 5 U.S.C. 624b(a)) and substituting therefor "five,"; and

(2) striking the word "six," in section 7 of said Act (79 Stat. 669; 5 U.S.C. 624(c)) and substituting therefor "seven."

(c) The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5362, and 7521 of title 5 of the United States Code. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

EDUCATION AND CONCILIATION

SEC. 809. Immediately after the enactment of this title the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this title. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of title 5 of the United States Code. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this title. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

ENFORCEMENT

SEC. 810. (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c), the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) A complaint under subsection (a) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title, the Secretary shall notify the appropriate State or local agency of any complaint filed under this title which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c), the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this title, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title. Such actions may be

brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 812, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 812, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

INVESTIGATIONS; SUBPENAS; GIVING OF EVIDENCE

SEC. 811. (a) In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: *Provided, however*, That the Secretary first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Secretary may issue subpenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

(b) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpenas issued by the Secretary himself. Subpenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

(c) Witnesses summoned by subpena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpena issued at the request of a respondent shall be paid by him.

(d) Within five days after service of a subpena upon any person, such person may petition the Secretary to revoke or modify the subpena. The Secretary shall grant the petition if he finds that the subpena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(e) In case of contumacy or refusal to obey a subpena, the Secretary or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpena was addressed resides, was served, or transacts business.

(f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpena or lawful order of the Secretary, shall be fined not more than $1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(g) The Attorney General shall conduct all litigation in which the Secretary participates as a party or as amicus pursuant to this Act.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 812. (a) The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however*, That the court shall continue such civil case brought pursuant to this section or section 810(d) from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however*, That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 813. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this title.

EXPEDITION OF PROCEEDINGS

SEC. 814. Any court in which a proceeding is instituted under section 812 or 813 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

EFFECT ON STATE LAWS

SEC. 815. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

COOPERATION WITH STATE AND LOCAL AGENCIES ADMINISTERING FAIR HOUSING LAWS

SEC. 816. The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this title. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 817. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806. This section may be enforced by appropriate civil action.

APPROPRIATIONS

SEC. 818. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title.

SEPARABILITY OF PROVISIONS

SEC. 819. If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of the title and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

* * *

Public Law 88-352
88th Congress, H. R. 7152
July 2, 1964

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

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TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

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PART 135—EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS

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135.15 Determination of the area of a section 3 covered project.
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Subpart A—General

§ 135.1 Purpose and scope of part.

(a)(1) The regulations set forth in this part contain the procedures established by the Secretary of Housing and Urban Development for carrying out his responsibilities under section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u. That section requires that:

(2) In the administration by the Secretary of Housing and Urban Development of programs providing direct financial assistance in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities, and new community development, the Secretary shall—

(i) Require, in consultation with the Secretary of Labor, that to the greatest extent feasible opportunities for training and employment arising in connection with the planning and carrying out of any project assisted under any such program be given to lower income persons residing in the area of such project; and

(ii) Require, in consultation with the Administrator of the Small Business Administration, that to the greatest extent feasible contracts for work to be performed in connection with any such project be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the area of such project.

(b) In the development of these regulations the Secretary has consulted with the Secretary of Labor and the Administrator of the Small Business Administration and mutual agreement has been reached with respect to the coordination of employment and training efforts and contracts awards under these regulations by the Department of Housing and Urban Development, the Department of Labor, and the Small Business Administration.

(c) The regulations as set forth in this part, particularly Subparts C and D of this part, shall serve to define "to the greatest extent feasible" as that term is applied in section 3 of the Housing and Urban Development Act of 1968.

(d) The Secretary will issue such further regulations in connection with his responsibilities under section 3 of the Housing and Urban Development Act of 1968 as he finds appropriate and may, as needed, amplify any regulations issued pursuant to section 3, through guidelines, handbooks, circulars, or other means.

§ 135.5 Definitions.

As used in this part—

(a) "Applicant" means any entity seeking assistance for a project including, but not limited to mortgagors, developers, local public bodies, nonprofit or limited dividend sponsors, builders, or property managers.

(b) "Business concerns located within the section 3 covered project area" means those individuals or firms located within the relevant section 3 covered project area as determined pursuant to § 135.15, listed on the Department's registry of eligible business concerns, and which qualify as small under the small business size standards of the Small Business Administration.

(c) "Business concerns owned in substantial part by persons residing in the section 3 covered project area" means those business concerns which are 51 percent or more owned by persons residing within the relevant section 3 covered project as determined pursuant to § 135.15, owned by persons considered by the Small Business Administration to be socially or economically disadvantaged, listed on the Department's registry of eligible business concerns, and which qualify as small under the small business size standards of the Small Business Administration.

(d) "Contracting party" means any entity which contracts with a contractor for the performance of work in connection with a section 3 covered project.

(e) "Contractor" means any entity which performs work in connection with a section 3 covered project.

ment of Housing and Urban Develop-

(f) "Department" means the Department.

(g) "Lower income resident of the area" means any individual who resides within the area of a section 3 covered project and whose family income does not exceed 90 percent of the median income in the Standard Metropolitan Statistical Area (or the county if not within an SMSA) in which the section 3 covered project is located.

(h) "Political jurisdiction" means a politically organized community with a governing body having general governmental powers.

(i) "Recipient" means any entity who received assistance for a project including, but not limited to, mortgagors, developers, local public bodies, nonprofit or limited dividend sponsors, builders or property managers.

(j) "Secretary" means the Secretary of Housing and Urban Development.

(k) "Section 3" means section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u.

(l) "Section 3 clause" means the contract provisions set forth in § 135.20(b).

(m) "Section 3 covered project" means any nonexempt project assisted by any program administered by the Secretary in which loans, grants, subsidies, or other financial assistance are provided in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities, and new community development (except where the financial assistance available under such program is solely in the form of insurance or guaranty). Projects, contracts, and subcontracts, connected with programs administered by the Secretary under section 235 and 236 of the National Housing Act, as well as any Public Housing program and which do not exceed $500,000 in estimated cost are exempted from the requirements of this part, as is any subcontract of $50,000 or under on such projects or contracts in excess of $500,000.

(n) "Subcontractor" means any entity (other than a person who is an employee of the contractor) which has agreed or arranged with a contractor to undertake a portion of the contractor's obligation or the performance of work in connection with a section 3 covered project.

§ 135.10 Delegation to Assistant Secretary for Equal Opportunity.

Except as otherwise provided in this part, the functions of the Secretary referred to in this part are delegated to the Assistant Secretary for Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities delegated in this section to employees of the Department, *Provided, however.* That the authority to issue rules and regulations under § 135.1(d) may not be redelegated.

§ 135.15 Determination of the area of a section 3 covered project.

(a) The area of a section 3 covered project shall be determined as follows:

(1) The boundaries of a section 3 covered project located:

(i) Within a geographic area designated as an urban renewal area pursuant to the provisions of title I of the Housing Act of 1949, 42 U.S.C. 1450; or

(ii) Within a geographic area designated as Model Cities areas or Metropolitan Development Plan areas pursuant to the provisions of title I of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301; or

(iii) Within a geographic area designated as an Indian reservation (to include all territory within reservation boundaries including fee patented roads, waters, bridges and lands used for agency purposes),

shall be coextensive with the boundaries of that geographic area.

(2) The boundaries of a section 3 covered project not located within a geographic area designated pursuant to title I of the Housing Act of 1949, or title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall be coextensive with the boundaries of the smallest political jurisdiction in which the project is located.

(3) To the extent that goals (established pursuant to Subparts B, C, and D of this part) cannot be met within a section 3 covered project area as determined pursuant to paragraph (a)(1) of this section, the boundaries of the smallest political jurisdiction in which the section 3 covered project is located shall be designated as the relevant section 3 covered project area. The determination to apply this subparagraph shall be made by the Assistant Secretary for Equal Opportunity or by the same official designated by the Assistant Secretary for Equal Opportunity to determine the section 3 covered project area pursuant to paragraph (a)(1) of this section.

(b) The Department's Regional Administrator, Area Office Director, or FHA Insuring Office Director, as appropriate, shall determine the boundaries of each

§ 135.20 Assurance of compliance with regulations.

(a) Every contract or agreement for a grant, loan, subsidy, or other direct financial assistance in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities, and new community development, entered into by the Department of Housing and Urban Development with respect to a section 3 covered project shall contain provisions requiring the applicant or recipient to carry out the provisions of section 3, the regulations set forth in this part, and any applicable rules and orders of the Department issued thereunder prior to approval of its application for assistance for a section 3 covered project.

(b) Every applicant, recipient, contracting party, contractor, and subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a section 3 covered project, the following clause (referred to as a section 3 clause):

A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

B. The parties to this contract will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR ———, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR ———. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR ——— and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR ———, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR ———.135.

§ 135.25 Bidding and negotiation requirements.

(a) Every applicant and recipient shall require prospective contractors for work in connection with section 3 covered projects to provide, prior to the signing of the contract, a preliminary statement of work force needs (skilled, semiskilled, unskilled labor and trainees by category) where known; where not known, such information shall be supplied prior to the signing of any contract between contractors and their subcontractors.

(b) When a bidding procedure is used to let the contract, the invitation or solicitation for bids shall advise prospective contractors of the requirements of these regulations. When the contract is let pursuant to negotiation or methods other than formal bidding procedures, prospective contractors shall be advised by the contracting party of the requirements of these regulations as part of the contract specifications.

§ 135.30 Other applicant and recipient obligations.

Every applicant and recipient shall assist and actively cooperate with the Secretary in obtaining the compliance of their contractors and subcontractors with the requirements of these regulations, including cooperation and assistance in distributing and collecting forms and information, and in notifying contracting parties and contractors of violations of these regulations, and shall refrain from entering into any contract with any contractor after notification by the Department that the contractor has been found in violation of these regulations pursuant to § 135.110(j).

§ 135.35 Effectuation of applicant obligations in direct and indirect relationships.

(a) Where the applicant for assistance under a section 3 covered project and the recipient of such assistance are not one and the same, the recipient shall be regarded as the successor in interest of the applicant and shall have the same obligations as the applicant with respect

to compliance with these regulations. These obligations shall be incorporated, specifically or by reference in the loan or grant agreement or other contract or agreement through which the assistance is provided to the recipient.

(b) Where the applicant or recipient itself will perform all or part of the work in connection with a section 3 covered project within the meaning of these regulations, with either permanent or temporary staff by force account, it will provide the Department with all forms and assurances required of a contractor or subcontractor by these regulations prior to the execution of any loan or grant agreement or other contract or agreement through which assistance is provided.

(c) Where the applicant, recipient or contractor sells, leases, transfers or otherwise conveys land upon which work in connection with a section 3 covered project within the meaning of these regulations is to be performed (for example, under the Urban Renewal or Neighborhood Development program), it shall include in each contract or subcontract for work on such land a clause requiring the purchaser, lessee, or redeveloper to assume the same obligations as a contractor for work under section 3 of these regulations (including the incorporation of the Assurance of Compliance language specified in § 135.20).

(d) Each such purchaser, lessee, or redeveloper shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

Subpart B—Utilization of Lower Income Area Residents as Trainees

§ 135.40 General.

Each applicant, recipient, contractor or subcontractor undertaking work in connection with a section 3 covered project shall fulfill his obligation to utilize lower income project area residents as trainees to the greatest extent feasible by:

(a) Utilizing the maximum number of persons in the various training categories in all phases of the work to be performed under the section 3 covered project; and

(b) Filling all vacant training positions with lower income project area residents except for those training positions which remain unfilled after a good faith effort has been made to fill them with eligible lower income project area residents.

§ 135.45 Establishing number of trainees.

(a) For the building construction occupations, the number of trainees or apprentices for each occupation shall be that number which can reasonably be utilized in each occupation on each phase of a section 3 covered project and in no event shall that number be less than the number of trainees or apprentices determined pursuant to regulations issued by the Secretary of Labor for each building construction occupation.

(b) For nonconstruction occupations or for any building construction occupations for which ratios are not determined pursuant to regulations of the Secretary of Labor, the number of trainees for each occupation shall be that number which can reasonably be utilized in each occupation on each phase of a section 3 covered project. The applicant, recipient, contractor, or subcontractor shall initially determine the maximum number of trainees for each occupation and submit that determination along with its justification to the Department.

§ 135.50 Good faith effort.

(a) Each applicant, recipient, contractor, or subcontractor seeking to establish that a good faith effort as required by § 135.40 has been made to fill all training positions with lower income area residents shall, as a minimum, set forth evidence acceptable to the Secretary that it has:

(1) Ascertained from the Department's Regional Administrator, Area Office Director, or FHA Insuring Office Director having jurisdiction over the section 3 covered project, the boundaries of the section 3 covered project area; and

(2) Attempted to recruit from the appropriate areas the necessary number of lower income residents through: Local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, or the U.S. Employment Service.

(3) Maintained a list of all lower income area residents who have applied either on their own or on referral from any source, and employ such persons, if otherwise eligible and if a trainee vacancy exists. If the contractor has no vacancies, the applicant, if otherwise eligible, shall be listed for the first available vacancy.

(b) Any applicant, recipient, contractor, or subcontractor which fills vacant § 135.45 apprentice or trainee positions in its organization immediately prior to undertaking work pursuant to a section 3 covered project shall set forth evidence acceptable to the Secretary that its actions were not an attempt to circumvent these regulations.

Subpart C—Utilization of Lower Income Area Residents as Employees

§ 135.55 General.

Each applicant, recipient, contractor or subcontractor undertaking work in connection with a section 3 covered project shall fulfill his obligation to utilize lower income project area residents as employees to the greatest extent feasible by:

(a) Identifying the number of positions in the various occupational categories including skilled, semiskilled, and unskilled labor, needed to perform each phase of the section 3 covered project;

(b) Identifying of the positions identified in paragraph (a) of this section, the number of positions in the various occupational categories which are currently occupied by regular, permanent employees;

(c) Identifying, of the positions identified in paragraph (a) of this section, the number of positions in the various occupational categories which are not currently occupied by regular, permanent employees;

(d) Establishing, of the positions identified in paragraph (c) of this section, a goal which is consistent with the purpose of this subpart within each occupational category of the number of positions to be filled by lower income residents of the section 3 covered project area; and

(e) Making a good faith effort to fill all of the positions identified in paragraph (d) of this section with lower income project area residents.

§ 135.60 Good faith effort.

(a) Each applicant, recipient, contractor, or subcontractor seeking to establish that a good faith effort as required by paragraph (e) of § 135.55 has been made to fill all employment positions identified in paragraph (d) of § 135.55 with lower income project area residents shall, as a minimum, set forth evidence acceptable to the Secretary that it has:

(1) Ascertained from the Department's Regional Administrator, Area Office Director, or FHA Insuring Office Director having jurisdiction over the section 3 covered project the boundaries of the section 3 covered project area; and

(2) Attempted to recruit from the appropriate areas the necessary number of lower income residents through: Local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Project Area Committees (PAC) in urban renewal areas, Model Cities citizen advisory boards, Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, or the U.S. Employment Service.

(b) Any applicant, recipient, contractor, or subcontractor which fills vacant § 135.55(d) employment positions in its organization immediately prior to undertaking work pursuant to a section 3 covered contract shall set forth evidence acceptable to the Secretary that its actions were not an attempt to circumvent these regulations.

(c) When lower income resident workers apply, either on their own initiative or on referral from any source, the recipient, contractor, or subcontractor shall determine the qualifications of such persons and shall employ such persons if their qualifications are satisfactory and the contractor has openings. If the

recipient, contractor, or subcontractor is unable to employ the workers, such persons shall be listed for the first available opening.

Subpart D—Utilization of Business Located in or Owned in Substantial Part by Persons Residing in the Area

§ 135.65 General.

Each applicant, recipient, contractor, or subcontractor undertaking work on a section 3 covered project shall assure that to the greatest extent feasible, contracts for work to be performed in connection with the project are awarded to business concerns located within the section 3 covered project area or business concerns owned in substantial part by persons residing in the section 3 covered area. The Department, in consultation with the Small Business Administration will establish for the section 3 covered project area a registry of business concerns which meet the definition contained in § 135.5(b) and (c). Each applicant, recipient, contractor, or subcontractor undertaking work in connection with a section 3 covered project shall fulfill his obligations to utilize business concerns located within or owned in substantial part by persons residing in the section 3 covered project area by developing and implementing an affirmative action plan.

§ 135.70 Development of an affirmative action plan.

In developing an affirmative action plan, each applicant, recipient, contractor, and subcontractor preparing to undertake work pursuant to a section 3 covered contract shall:

(a) Set forth the approximate number and dollar value of all contracts proposed to be awarded to all businesses within each category (type or profession) over the duration of the section 3 covered project in question.

(b) Analyze the information set forth in paragraph (a) of this section and the availability of eligible business concerns within the project area doing business in professions or occupations identified as needed in paragraph (a) of this section, and set forth a goal or target number and estimated dollar amount of contracts to be awarded to the eligible businesses and entrepreneurs within each category over the duration of the section 3 covered project.

(c) Outline the anticipated program to be used to achieve the goals for each business and/or professional category identified. This program should include but not be limited to the following actions:

(1) Insertion in the bid documents, if any, of the affirmative action plan of the applicant, recipient, contractor, or subcontractor letting the contract; and

(2) Identification within the bid document, if any, of the applicable section 3 project area.

(d) Indicate the anticipated process and steps which have been taken and/or will be taken to secure the cooperation of contractors, subcontractors, and unions in meeting the goals and carrying out the affirmative action plan developed pursuant to this subpart.

(e) Take steps to insure that the appropriate business concerns included in the Department's registry for the section 3 covered project area are notified of pending contractual opportunities either personally or through locally utilized media. All applicants, recipients, contractors and subcontractors which so notify concerns included in the Department's registry of available contracts and of opportunities to submit bids shall satisfy all requirements of this Part for notification of business concerns located within the section 3 covered project area and business concerns owned in substantial part by persons residing in the section 3 covered project area.

(f) Take steps to insure that contracts which are typically let on a negotiated rather than a bid basis in areas other than section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a section 3 covered project area.

(g) Where competitive bids are solicited, require the bidders to submit their utilization goals, and their affirmative action plans for accomplishing their goals, and in evaluating each bid, to determine its responsiveness, carefully evaluate the bidders' submission to determine whether the affirmative action plan proposed will accomplish the stated goals.

(h) Where advantageous, seek the assistance of local officials of the Department in preparing and implementing the affirmative action plan.

(i) In implementing its affirmative action plan, each applicant, recipient, contractor, or subcontractor shall make a good faith effort to achieve its goal or target number and estimated dollar amount of contracts to be awarded to the eligible businesses and entrepreneurs within each category over the duration of the section 3 covered project. Each applicant, recipient, contractor, or subcontractor seeking to establish that a good faith effort has been made to implement its affirmative action plan, as required by this paragraph, shall as a minimum, set forth evidence acceptable to the Secretary that it has implemented the steps required by paragraphs (c), (d), (e), (f), (g), and (h) of this section and has ascertained from the Department's Regional Administrator, Area Office Director, or FHA Office Director having jurisdiction over the section 3 covered project, the boundaries of the section 3 covered project area, if available, and attempted to recruit from the appropriate areas the necessary eligible business concerns through: Local advertising media, signs placed at the proposed site for the project; and community organizations and public or private institutions operating within or serving the project area such as Project Area Committees (PAC) in urban renewal areas, Model Cities citizen advisory boards, Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, or the U.S. Employment Service, as well as the Chamber of Commerce and any equivalent organizations in the section 3 covered project area.

Subpart E—Participation in Approved Programs

§ 135.75 Participation as evidence of compliance with section 3 requirements.

Any applicant, recipient, contractor, or subcontractor may fulfill his obligations under Subparts B, C, and D of this part, respectively, to utilize lower income project area residents as trainees or employees on section 3 covered projects, and to award contracts to business concerns located in, or owned in substantial part by residents of, section 3 covered project areas by presenting evidence satisfactory to the Secretary that he is a cooperating participant in a federally assisted or other public program approved by the Department of Housing and Urban Development which provides training, employment, and/or business opportunities to lower income persons and business concerns which meet the definition in § 135.5 (b) and (c). The Secretary shall, from time to time, make public a list of those training, employment, and/or business opportunity programs approved by the Department.

Subpart F—Grievance and Compliance Review

§ 135.80 Who may file grievance.

Any lower income resident of the project area, for himself or as a representative of persons similarly situated, seeking employment or training opportunities with an applicant, recipient, contractor, or subcontractor, or any business concern located in, or owned in substantial part by persons residing within a propect area seeking contract opportunities from any applicant, recipient, contractor, or subcontractor, for itself or as a representative of persons or firms similarly situated, may personally or by an authorized representative file a grievance alleging noncompliance with section 3, these regulations, or obligations undertaken pursuant thereto.

§ 135.85 Content of grievance filings.

(a) The grievance should include: (1) The name and address of the grievant, (2) the name and address of the grievant's business, if applicable, (3) the name and address of the applicant, recipient, contractor, or subcontractor (in this subpart called "respondent"), (4) a description of the acts or omissions giving rise to the grievance, and (5) the corrective action sought.

(b) Where a grievance contains incomplete information, the Secretary shall seek promptly the needed information from the grievant. In the event such information is not furnished to the Secretary within sixty (60) days of the date of such request, the grievance may be closed.

§ 135.90 Form of grievance filings.

Each grievance shall be in writing and signed.

§ 135.95 Place of filing.

A grievance may be filed by mailing it to the Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development, Washington, D.C. 20410, or by presenting it at any Regional Office, Area Office, or FHA Insuring Office of the Department. Any employee of the Department receiving a grievance shall forward the same directly to the Assistant Secretary for Equal Opportunity.

§ 135.100 Time of filing.

A grievance must be filed not later than ninety (90) days from the date of the action (or omission) upon which the grievance is based, unless the time for filing is extended by the Secretary upon good cause shown.

§ 135.105 Processing of grievance filings.

(a) Upon receipt of a grievance a copy thereof shall be furnished the respondent by certified mail or through personal service.

(b) The Secretary shall conduct an investigation of each grievance filed, and shall give notice in writing to the grievant and the respondent as to whether he intends to resolve it.

(c) Notwithstanding paragraphs (a) and (b) of this section, where the allegations of a grievance on their face, or as amplified by the statements of the grievant, disclose that the grievance is not timely filed or otherwise fails to state a valid claim for relief under these regulations or any other authority within the jurisdiction of the Department, the Secretary may dismiss the grievance without further action. To the extent that Executive Order 11246 relating to Equal Opportunity in Employment applies to the subject matter of the grievance, the procedures required by applicable regulations implementing that order shall be followed.

(d) If the Secretary decides not to resolve a grievance, or to dismiss it under paragraph (c) of this section, he shall advise the grievant of the disposition of his grievance. Respondent shall also be notified in any case where he has been served with a copy of the grievance.

(e) Any party adversely affected by a determination under paragraph (b) or (c) of this section may, within 5 days of receipt of a notice of determination, request that the Secretary reconsider his action. Such request for reconsideration will be granted only on the basis of additional material evidence not previously available to the party requesting reconsideration or for other good cause shown.

(f) If the Secretary decides to resolve a grievance, he shall endeavor to eliminate or correct the matters complained of in the grievance by informal methods of conference, conciliation, and persuasion.

(g) In conciliating a grievance, the Secretary shall attempt to achieve a just resolution of the grievance including (1) specific relief for the grievant, (2) affirmative actions by the respondent to relieve the effects of past violation and preclude the occurrence of future violation, and (3) appropriate reporting requirements. Notice of a proposed disposition of a grievance and of the terms of a proposed settlement, if any, shall be given to the parties, or their representatives, by the Secretary, in writing. If satisfactory, the proposed settlement shall be signed by the grievant and the respondent or their representatives and approved by the Secretary. The Secretary may, from time to time, review compliance with the terms of any settlement agreement and may, upon a finding of noncompliance, reopen the grievance or take such enforcement action as is provided for under the settlement agreement or as may otherwise be appropriate.

(h) Should a respondent fail or refuse to confer with the Secretary or fail or refuse to make a good faith effort to resolve the grievance, or should the Secretary find for any other reason that voluntary agreement is not likely to result, the Secretary may terminate his efforts to conciliate the dispute. In the latter event the parties shall be notified promptly, in writing, that such efforts have been unsuccessful.

(i) If the Department is unable to obtain voluntary compliance, the Secretary shall advise the grievant and the parties in writing of his proposed resolution of the grievance. Such resolution shall become final and binding on the parties, unless within 15 days after the receipt of notification, either party files with the Secretary a written request for a hearing on the matter.

§ 135.110 Hearings.

(a) Whenever a hearing is requested, reasonable notice shall be given by registered or certified mail, return receipt requested, to the parties. This notice shall advise the parties of the action proposed to be taken, the specific provision under which the proposed action is to be taken, and the matters of fact or law asserted as the basis for this action. In addition, it shall either (1) fix a date not less than 20 days after the date of such notice within which the parties may request of the Secretary that the matter be scheduled for hearing or (2) advise the parties that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be subject to change for cause. The requesting party may waive a hearing and in lieu thereof submit written information and argument for the record. The failure of the requesting party to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is available.

(b) Hearings shall be held in or near the section 3 covered project area in question, or at such other location as will serve the convenience of parties and witnesses, at a time fixed by the Secretary. Hearings shall be held before the Secretary or, at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344.

(c) In all proceedings under this section, the respondent and grievant, if any, shall have the right to be represented by counsel.

(d) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557, and in accordance with such rules of procedure issued by HUD as are proper relating to the conduct of the hearing, the issuance of notice except that provided in paragraph (a) of this section, the taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. HUD, the respondent, and the grievant, if any, shall be entitled to introduce all relevant evidence on the issues as stated in the notice of hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(e) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where deemed reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the Department of Housing and Urban Development, the respondent, and the grievant, if any, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(f) If the hearing is held by a hearing examiner, he shall either render an initial decision, if so authorized, or certify the entire record, including his recommended findings and proposed decision to the Secretary for a final decision. A copy of such initial decision or certification shall be mailed to the respondent and the grievant, or their representative, by certified or registered mail, return receipt requested. Where the initial decision is made by the hearing examiner, the respondent or grievant may within 30 days of the mailing of such notice of initial decision file with the Secretary exceptions to the initial

decision, with reasons therefor. In the absence of exception, the Secretary may on his own motion, within 45 days after the initial decision, serve on the respondent and grievant, a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review, the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. If no exception is taken or notice of review issued, the initial decision shall constitute the final decision of the Secretary.

(g) Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (f) of this section, or whenever the Secretary conducts the hearing, the respondent and grievant shall be given reasonable opportunity to file briefs or other written statements of their contentions, and a copy of the final decision of the Secretary shall be given in writing to the respondent, and to the grievant by certified or registered mail, return receipt requested.

(h) Whenever a hearing is waived pursuant to paragraph (a) of this section, a decision shall be made by the Secretary on the record and a copy of such decision shall be given in writing to the respondent, and to the grievant, by certified or registered mail, return receipt requested.

(i) Each decision of a hearing examiner or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements of section 3 of the Housing and Urban Development Act of 1968 or the regulations which the respondent has not complied with.

(j) The final decision may contain such terms, conditions, and other provisions as are consistent with, and will effectuate the purposes of section 3 and these regulations. The decision may also include provisions designed to implement, maintain, and enforce sanctions set forth in § 135.135 until the respondent corrects its noncompliance and satisfies the Secretary that it will fully comply with section 3 and these regulations.

(k) The General Counsel shall represent the Department and shall receive copies of all notices, decisions and other documents which are forwarded to the parties.

(l) The applicant or recipient, if not a party, shall be invited to participate in the hearing and shall receive copies of all notices, decisions, and other documents which are forwarded to the parties.

§ 135.115 Compliance reviews and procedures.

In order to determine whether the responsibilities imposed upon him by section 3 and these regulations are being properly carried out, the Secretary shall [illegible] 3 compliance reviews of selected applicants, recipients, contractors, and subcontractors. A compliance review shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned section 3 policies, and conditions resulting therefrom. Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through the conciliation process set forth in § 135.105(g). Compliance reviews may be conducted prior to award of contracts in any case where the Secretary has reasonable grounds based on a substantial grievance, the Department's own investigation, or other substantial evidence, to believe that the applicant, recipient, contractor, or subcontractor will be unable or unwilling to comply with section 3 and the provisions of this part.

Subpart G—Miscellaneous

§ 135.120 Reporting and recordkeeping.

In order to insure that the Secretary is kept informed of the progress being made by the applicant, recipient, contractor, and subcontractor in meeting their obligations under these regulations, each applicant, recipient, contractor, and subcontractor is required to:

(a) Maintain such records and accounts and furnish such information and reports as are required by the Secretary under these regulations or pursuant thereto and permit the Secretary access to books, records, and premises for purposes of investigation in connection with a grievance or to ascertain compliance with these regulations or the rules and orders of the Department issued thereunder.

(b) Advise the Secretary within 15 days of the award of any contract under a section 3 covered project of the steps which have been and will be taken to comply with the requirements of Subparts B, C, and D of this part.

§ 135.125 Implementing procedures and instructions.

All regulations, procedures, and circulars previously issued by the Department designed or purporting to implement the provisions of section 3 are revoked and superseded by this part. Handbook MC 3160.1 entitled Model Cities Resident Employment and Training Requirements, is superseded to the extent that Handbook MC 3160.1 applies to occupations related to housing and urban development including the field of construction, design, architecture, mortgage banking, rehabilitation, maintenance, repair and housing management.

§ 135.130 Labor standards.

All labor standards applicable by [illegible] trative issuance shall apply to section 3 covered projects.

§ 135.135 Sanctions.

Failure or refusal to comply and give satisfactory assurances of future compliance with the requirements of this part shall be proper basis for applying sanctions. Such sanctions as are specified by the grant or loan agreement or contract through which Federal assistance is provided, as well as such sanctions as are specified by the rules, regulations, or applicable policy of the Department of Housing and Urban Development governing the program under which Federal assistance to the project is provided, shall be applied in accordance with the relevant regulations. Any or all of the following actions may be taken, as appropriate: cancellation, termination, or suspension in whole or in part of the contract or agreement; a determination of ineligibility or debarment from any further assistance or contracts under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received, and referral to the Department of Justice for appropriate legal proceedings.

§ 135.140 Effective date.

This part shall become effective [illegible] November 23, 1973, and shall apply to all applications for assistance filed with HUD on or after the effective date of this part. However, nothing in this part shall affect requirements already imposed on applicants, recipients and contractors, and subcontractors pursuant to section 3.

FR 29221, Oct. 23, 1973
FR 31968, Nov. 20, 1973
FR 29594, Aug. 16, 1974

PART 107—NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063

Sec.

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§ 107.10 Purpose.

These regulations are to carry out the requirements of E.O. 11063 that all action necessary and appropriate be taken to prevent discrimination because of race, color, creed, or national origin in the sale, rental, leasing or other disposition of residential property and related facilities or in the use or occupancy thereof where such property or facilities are owned or operated by the Federal Government, or provided with Federal assistance by the Department of Housing and Urban Development and in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by the Department. These regulations are intended to assure compliance with the established policy of the United States that the benefits under programs and activities of the Department which provide financial assistance, directly or indirectly, for the provision, rehabilitation, or operation of housing and related facilities are made available without discrimination based on race, color, creed, or national origin. These regulations are also intended to assure compliance with the policy of this Department to administer its housing programs affirmatively, so as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, creed, or national origin.

§ 107.11 Relation to other authorities.

(a) Where allegations of discrimination on the grounds of race, color, or national origin are made in a program or activity of Federal financial assistance of the Department which does not involve a contract of insurance or guaranty, the provisions of Title VI of the Civil Rights Act of 1964 and regulations implementing Title VI, Nondiscrimination in Federally Assisted Programs, under Part 1 of this Title shall apply. Any complaint alleging discrimination on the basis of race, color, creed or national origin in a program or activity of the Department involving a contract of insurance or guaranty will be received and processed according to this Part.

(b) Where a complaint filed pursuant to this Part alleges a discriminatory housing practice which is also covered by Title VIII of the Civil Rights Act of 1968, the complainant shall be advised of the right to file a complaint pursuant to Section 810 of that Title and of the availability of Department procedures regarding fair housing complaints under Part 105 of this Title. The complainant shall also be advised of the right to initiate a civil action in court pursuant to Section 812 of the Civil Rights Act of 1968 without first filing a complaint with HUD.

§ 107.15 Definitions.

(a) "Department" means the Department of Housing and Urban Development.

(b) "Secretary" means the Secretary of Housing and Urban Development.

(c) "State" means each of the fifty states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Marianas, and the territories of the United States.

(d) "Assistance" includes (1) grants, loans, contributions, and advances of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the sale, lease, and rental of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale or lease to the recipient, when such order granting permission accompanies the sale, lease, or rental of Federal properties; (4) loans in whole or in part insured, guaranteed, or otherwise secured by the credit of the Federal Government; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives or agents, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and public entities.

(f) "Public entity" means a government or governmental subdivision or agency.

(g) "Discriminatory practice" means: (1) Any discrimination on the basis of race, color, creed, or national origin or the existence or use of a policy or practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, creed or national origin, in the sale, rental or other disposition of residential property or related facilities (including land to be developed for residential use), or in the use or occupancy thereof, where such property or related facilities are:

(i) Owned or operated by the Secretary;

(ii) Provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Department after November 20, 1962;

(iii) Provided in whole or in part by loans insured, guaranteed or otherwise secured by the credit of the Department after November 20, 1962; or

(iv) Provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency or unit of general purpose local government receiving Federal financial assistance from the Department under a loan or grant contract entered into after November 20, 1962.

(2) Any discrimination on the basis of race, color, creed, or national origin or the existence or use of a policy, practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, creed or national origin in lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans, insured or guaranteed, by the Department after November 20, 1962. Examples of discriminatory practices under subsections (1) and (2) include but are not limited to the following when based on race, color, creed or national origin:

(i) Denial to a person of any housing accommodations, facilities, services, financial aid, financing or other benefit provided under a program or activity;

(ii) Providing any housing accommodations, facilities, services, financial aid, financing or other benefits to a person which are different, or are provided in a different manner, from those provided to others in a program or activity;

(iii) Subjecting a person to segregation or separate treatment in any matter related to the receipt of housing, accommodations, facilities, serv-

ices, financial aid, financing or other benefits under a program or activity;

(iv) Restricting a person in any way in access to housing, accommodations, facilities, services, financial aid, financing or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under a program or activity;

(v) Treating persons differently in determining whether they satisfy any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, financing or other benefits under a program or activity; and

(vi) Denying a person opportunity to participate in a program or activity through the provision of services or otherwise, or affording the person an opportunity to do so which is different from that afforded others in a program or activity.

(3) Noncompliance with relevant affirmative fair housing marketing requirements contained in Department programs and regulations.

(4) A formal finding of a violation of Title VIII of the Civil Rights Act of 1968 or a state or local fair housing law with respect to activities also covered by E.O. 11063.

§ 107.20 Prohibition against discriminatory practices.

(a) No person receiving assistance from or participating in any program or activity of the Department involving housing and related facilities shall engage in a discriminatory practice.

(b) Where such person has been found by the Department or any other Federal Department, agency, or court to have previously discriminated against persons on the ground of race, color, creed, or national origin, he or she must take affirmative action to overcome the effects of prior discrimination.

(c) Nothing in this part precludes such person from taking affirmative action to prevent discrimination in housing or related facilities where the purpose of such action is to overcome prior discriminatory practice or usage or to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, creed or national origin.

§ 107.21 Prevention of discriminatory practices.

All persons receiving assistance from, or participating in any program or activity of the Department involving housing and related facilities shall take all action necessary and proper to prevent discrimination on the basis of race, color, creed, or national origin.

§ 107.25 Provisions in legal instruments.

(a) The following documents shall contain provisions or statements requiring compliance with E.O. 11063 and this part:

(1) Contracts, grants and agreements providing Departmental assistance for the provision of housing and related facilities,

(2) Contracts, grants and agreements regarding the sale, rental or management of properties owned by the Secretary,

(3) Corporate charters and regulatory agreements relating to multifamily and land development projects assisted by the Department,

(4) Approvals of financial institutions and other lenders as approved FHA mortgagees,

(5) Requests for subdivision reports under home mortgage procedures and for preapplication analysis of multifamily and land development projects, and

(6) Contracts and agreements providing for Departmental insurance or guarantee of loans with respect to housing and related facilities.

(b) The provision or statement required pursuant to this section shall indicate that the failure or refusal to comply with the requirments of E.O. 11063 or this part shall be a proper basis for the imposition of sanctions provided in § 107.60.

§ 107.30 Recordkeeping requirements.

(a) All persons receiving assistance through any program or activity of the Department involving the provision of housing and related facilities subject to E.O. 11063 shall maintain racial and national origin data required by the Department in connection with its programs and activities.

(b) All lenders participating in Departmental mortgage insurance programs, home improvement loan programs, GNMA mortgage purchase programs, or special mortgage assistance programs, shall maintain data regarding the race and national origin of each applicant and joint applicant for assistance with regard to residential property and related facilities. This data shall be noted in the following categories: American Indian/Alaskan Native, Asian/Pacific Islander, Black, White, Hispanic, Other (specify) If an applicant or joint applicant refuses to voluntarily provide the information or any part of it, that fact shall be noted and the information shall be obtained through observation. Applications shall be retained for a period of at least twenty-five (25) months following the date the record was made.

(c) If an investigation or compliance review under this part reveals a failure to comply with any of the requirements of paragraph (a) or (b) of this section, the respondent shall have the burden of establishing its compliance with this part and with the equal housing opportunity requirements of the Executive Order.

§ 107.35 Complaints.

(a) The Assistant Secretary for FH&EO, or designee, shall conduct such compliance reviews, investigations, inquiries, and informal meetings as may be necessary to effect compliance with this part.

(b) Complaints under this part may be filed by any person and must be filed within one year of date of the alleged act of discrimination unless the time for filing is extended by the Assistant Secretary for FH&EO. Complaints must be signed by the complainant and may be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, D.C., 20410, or any Regional or Area Office of the Department. All complaints shall be forwarded to the Director, Office of Regional Fair Housing and Equal Opportunity in the appropriate Regional Office which has jurisdiction in the area in which the property is located.

(c) Upon receipt of a timely complaint, the Director of the Office of Regional FH&EO shall determine whether the complaint indicates a possible violation of the Executive Order or this part. The Director of the Office of Regional FH&EO or a designee within a reasonable period of time shall conduct an investigation into the facts. The complainant shall be notified of the determination.

§ 107.40 Compliance meeting.

(a) Where preliminary analysis of a complaint, a compliance review initiated by the Assistant Secretary for FH&EO, or other information indicates a possible violation of E.O. 11063, or this part, the person allegedly in violation ("respondent") shall be sent a Notice of Compliance Meeting and requested to attend a compliance meeting. The Notice shall advise the respondent of the matters to be addressed in the Compliance Meeting and the allegations contained in a complaint received pursuant to § 107.35 The purpose of the compliance meeting is to provide the respondent with the opportunity to address matters raised and to remedy such possible violations speedily and informally, to identify possible remedies; and to effect a resolution as provided in § 107.45.

(b) The Notice of Compliance Meeting shall be sent to the last known address of the person allegedly in violation, by certified mail, or through per-

sonal service. The Notice will advise such person of the right to respond within seven (7) days to the matters and to submit information and relevant data evidencing compliance with E.O. 11063, the Affirmative Fair Housing Marketing Regulations, 24 CFR 200.600, the Fair Housing Poster Regulations, 24 CFR Part 110, the Advertising Guidelines for Fair Housing, 37 FR 6700, April 1, 1972, other affirmative marketing requirements applicable to the program or activity and any revisions thereto. Further, the person will be offered an opportunity to be present at the meeting in order to submit any other evidence showing such compliance. The date, place, and time of the scheduled meeting will be included in the Notice.

(c) Whenever a compliance meeting is scheduled as a result of a complaint, the complainant shall be sent a copy of the Notice of Compliance Meeting and shall be provided an opportunity to attend the meeting.

(d) The Area Office having jurisdiction over the program will prepare a report concerning the status of the respondent's participation in Department programs to be presented to the respondent at the meeting. The Area Manager shall be notified of the meeting and may attend the meeting.

(e) At the Compliance Meeting the respondent and the complainant may be represented by counsel and shall have a fair opportunity to present any matters relevant to the complaint.

(f) During and pursuant to the Compliance Meeting, the Director of the Office of Regional FH&EO shall consider all evidence relating to the alleged violation, including any action taken by the person allegedly in violation to comply with E.O. 11063.

(g) If the evidence shows no violation of the Executive Order or this part, the Director of the Office of Regional FH&EO shall so notify the person(s) involved within ten (10) days of the meeting. A copy of this notification shall be sent to the complainant, if any, and shall be submitted to the Assistant Secretary for FH&EO.

(h) If the evidence indicates an apparent failure to comply with the Executive Order or this part, and the matter cannot be resolved informally pursuant to § 107.45, the Director of the Office of Regional FH&EO shall so notify the respondent and the complainant, if any, no later than ten (10) days after the date on which the compliance meeting is held, in writing by certified mail, return receipt requested, and shall advise the complainant, if any, and the respondent whether the Department will conduct a compliance review pursuant to § 107.50 or, where appropriate, refer the matter to the Assistant Secretary for FH&EO for possible imposition of sanctions. A copy of this notification shall be submitted to the Assistant Secretary for FH&EO. The compliance review shall be conducted to determine whether the respondent has complied with the provisions of E.O. 11063, Title VIII of the Civil Rights Act of 1968, Department regulations and the Department's Affirmative Fair Housing Marketing requirements.

(i) If the respondent fails to attend a compliance meeting scheduled pursuant to this section, the Director of the Office of Regional FH&EO shall notify the respondent no later than ten (10) days after the date of the scheduled meeting, in writing by certified mail, return receipt requested, as to whether the Department will conduct a compliance review or, where appropriate, refer the matter to the Assistant Secretary for FH&EO for possible imposition of sanctions. A copy of this notification shall be submitted to the Assistant Secretary for FH&EO and sent to the complainant, if any.

§ 107.45 Resolution of matters.

(a) Attempts to resolve and remedy matters found in a complaint investigation or a compliance review shall be made through the methods of conference, conciliation, and persuasion.

(b) Resolution of matters pursuant to this section and § 107.40 need not be attempted where similar efforts by another Federal agency have been unsuccessful in ending and remedying the violation found with respect to the same respondent.

(c) Efforts to remedy matters shall be directed toward achieving a just resolution of the probable violation and obtaining assurance(s) that the respondent will satisfactorily remedy any violation of E.O. 11063 and will take actions to eliminate the discriminatory practices and prevent reoccurrences. Compensation to individuals from the respondent may also be considered.

(d) The terms of settlements shall be reduced to a written agreement, signed by the respondent and the Assistant Secretary for FH&EO or a designee. Such settlements shall seek to protect the interests of the complainant, if any, other persons similarly affected, and the public interest. A written notice of the disposition of matters pursuant to this section and of the terms of settlements shall be given to the Area Manager by the Assistant Secretary for FH&EO or a designee and to the complainant, if any. When the Assistant Secretary or a designee determines that there has been a violation of a settlement agreement, the Assistant Secretary immediately may take action to impose sanctions provided under this part, including the referral of the matter to the Attorney General for appropriate action.

§ 107.50 Compliance reviews.

(a) Compliance reviews shall be conducted by the Director of the Office of Regional FH&EO or a designee. Complaints alleging a violation(s) of this part or information ascertained in the absence of a complaint indicating apparent failure to comply with this part shall be referred immediately to the Director of the Office of Regional FH&EO. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall be notified of all alleged violations of the regulations. A complaint is not a prerequisite for the initiation of compliance review.

(b) The purpose of a compliance review is to determine whether the respondent is in compliance with the Executive Order and this part. Where allegations may also indicate a violation of the provisions of Title VIII of the Civil Rights Act of 1968, HUD regulations issued thereunder and Affirmative Fair Housing Marketing requirements, a review may be undertaken to determine compliance with those requirements. The respondent shall be given at least five (5) days notice of the time set for any compliance review and the place or places for such review. The complainant shall also be notified of the compliance review.

§ 107.51 Findings of Noncompliance.

(a) A finding of noncompliance shall be made when the facts disclosed during an investigation or compliance review, or other information, indicate a failure to comply with the provisions of E.O. 11063 or this part. In no event will a finding of noncompliance precede the completion of the compliance meeting procedures set forth in § 107.40.

(b) Determinations of noncompliance with E.O. 11063 shall be made in any case in which the facts establish the existence of a discriminatory practice under § 107.15(g).

(c) The existence or use of a policy or practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons, because of race, color, creed or national origin, to apply for or receive the benefits of assistance shall be a basis for finding a discriminatory practice unless the respondent can establish that:

(1) The policy or practice is designed to serve a legitimate business necessity or governmental purpose of the respondent;

(2) The policy or practice effectively carries out the interest it is designed to serve; and

(3) No alternative course of action could be adopted that would enable respondent's interest to be served with a less discriminatory impact.

§ 107.55 Compliance report.

(a) Following completion of efforts under this part the Director of the Office of Regional FH&EO or a designee shall prepare a compliance report promptly and the Assistant Secretary for FH&EO shall make a finding of compliance or noncompliance. If it is found that the respondent is in compliance, all persons concerned shall be notified of the finding. Where a finding of noncompliance is made, the report shall specify the violations found. The Director of the Office of Regional FH&EO shall send a copy of the report to the respondent by certified mail, return receipt requested, together with a Notice that the matter will be forwarded to the Assistant Secretary for FH&EO for a determination as to whether actions will be initiated for the imposition of sanctions. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall also receive a copy of the report and the notice of intention to refer the matter to the Assistant Secretary for FH&EO.

(b) The Notice will provide that the respondent shall have seven (7) days to respond to the violations found and resolve and remedy matters in the compliance report. At the expiration of the seven (7) day period the matter shall be referred to the Assistant Secretary for FH&EO.

(c) The complainant shall be sent a copy of the findings and compliance report and shall have seven (7) days to comment thereon.

§ 107.60 Sanctions and penalties.

(a) Failure or refusal to comply with E.O. 11063 or the requirements of this part shall be proper basis for applying sanctions. Violations of Title VIII of the Civil Rights Act of 1968 or a state or local fair housing law, with respect to activities covered by the Executive Order, or of the regulations and requirements under E.O. 11063 of other Federal Departments and agencies may also result in the imposition of sanctions by this Department.

(b) Such sanctions as are specified by E.O. 11063, the contract through which Federal assistance is provided, and such sanctions as are specified by the rules or regulations of the Department governing the program under which Federal assistance to the project is provided, shall be applied in accordance with the relevant regulations. Actions which may be taken include: cancellation or termination, in whole or in part of the contract or agreement; refusal to approve a lender or withdrawal of approval; a determination of ineligibility, suspension or debarment from any further assistance or contracts provided, however, that sanctions of debarment, suspension and ineligibility are subject to the Department's regulations under Part 24 of this title; and provided further, that no sanction under section 302 (a), (b) and (c) of E.O. 11063 shall be applied by the Assistant Secretary for FH&EO without the concurrence of the Secretary.

(c) The Department shall use its good offices in order to promote the abandonment of discriminatory practices with regard to residential property and related facilities provided with assistance prior to the effective date of E.O. 11063 and take appropriate actions permitted by law including the institution of appropriate litigation to provide such equal housing opportunities.

(d) In any case involving the failure of a lender to comply with the requirements of the Executive Order or this part, the Assistant Secretary for FH&EO shall notify the Federal financial regulatory agency having jurisdiction over the lender of the findings in the case.

§ 107.65 Referral to the Attorney General.

If the results of a complaint investigation or a compliance review demonstrate that any person, or specified class of persons, has violated E.O. 11063 or this part, and efforts to resolve the matter(s) by informal means have failed, the Assistant Secretary for FH&EO in appropriate cases shall recommend that the General Counsel refer the case to the Attorney General of the United States for appropriate civil or criminal action under section 303 of E.O. 11063.

FR 59514, Sept. 9, 1980

Leadership and Coordination of Fair Housing in Federal Programs

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide under the leadership of the Secretary of Housing and Urban Development, in accordance with Section 808 of the Act of April 11, 1968, as amended (sometimes referred to as the Federal Fair Housing Act or as Title VIII of the Civil Rights Act of 1968), 42 U.S.C. 3608, for the administration of all Federal programs and activities relating to housing and urban development in a manner affirmatively to further fair housing throughout the United States, it is hereby ordered as follows:

1–1. Administration of Programs and Activities Relating to Housing and Urban Development.

1–101. All programs and activities of Executive agencies, including agencies which exercise regulatory responsibility, relating to housing and urban development shall be administered in a manner affirmatively to further fair housing.

1–2. Responsibilities of Executive Agencies.

1–201. The authority and responsibility for administering the Federal Fair Housing Act is vested in the Secretary of Housing and Urban Development.

1–202. The head of each Executive agency is responsible for ensuring that its programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing as required by Section 808 of the Act of April 11, 1968, as amended (Title VIII of the Civil Rights Act of 1968), and for cooperating with the Secretary of Housing and Urban Development who shall be responsible for exercising leadership in furthering the purposes of the Act. As used in this Order, the terms "programs and activities" include programs and activities operated, administered or undertaken by the Federal government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility.

1–203. In carrying out the responsibilities in this Order the head of each Executive agency shall take appropriate steps to require that all persons or other entities who are applicants for, or participants in, or who are supervised or regulated under, agency programs and activities relating to housing and urban development comply with this Order.

1–3. Specific Responsibilities.

1–301. In implementing the responsibilities under Section 1–2 the Secretary of Housing and Urban Development shall:

(a) Develop guidelines for determining the categories of programs and activities relating to housing and urban development which are operated, administered, undertaken, controlled or regulated by Executive agencies.

(b) Promulgate regulations regarding programs and activities of Executive agencies related to housing and urban development which shall:

(1) describe an institutionalized method for analyzing the impact of housing and urban development programs and activities in promoting the goal of fair housing;

(2) describe the responsibilities and obligations in assuring that programs and activities are administered and executed in a manner affirmatively to further fair housing; and

(3) describe the responsibilities and obligations of applicants, participants and other persons and entities involved in housing and urban development programs and activities affirmatively to further the goal of fair housing.

(c) Coordinate Executive agency implementation of the requirements of this Order and issue standards and procedures regarding the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing.

1–302. Upon publication of guidelines by the Secretary of Housing and Urban Development under Section 1–301(a), each Executive agency shall provide the Secretary with a description of all programs and activities relating to housing and urban development within its jurisdiction.

1–303. Within 180 days of the publication of final regulations by the Secretary of Housing and Urban Development under Section 1–301(a) the head of each Executive agency shall publish proposed regulations providing for the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing, consistent with the Secretary of Housing and Urban Development regulations, and with the standards and procedures issued pursuant to Section 1–301(c). As soon as practicable, each Executive agency shall issue its final regulations. All Executive agencies shall formally submit all such proposed and final regulations, and any related issuances or standards to the Secretary of Housing and Urban Development at least 30 days prior to public announcement.

1–304. The Secretary of Housing and Urban Development shall review regulations, standards and actions under Sections 1–302 and 1–303 to ensure conformity with the purposes of the Federal Fair Housing Act and consistency among the operations of the various Executive agencies and shall make any comments with respect thereto on a timely basis.

1–305. In addition to the regulations and guidelines described in Section 1–301, the Secretary of Housing and Urban Development shall implement the Secretary's authority and responsibility for administering the Federal Fair Housing Act by promulgating regulations describing the nature and scope of coverage and the conduct prohibited.

1–4. Cooperative Efforts.

1–401. The Secretary of Housing and Urban Development shall:

(a) Cooperate with, and render assistance to, the heads of all Executive agencies in the formulation of policies and procedures to implement this Order and to provide information and guidance on the affirmative administration of programs and activities relating to housing and urban development and the protection of rights accorded persons by the Federal Fair Housing Act; and

(b) initiate cooperative efforts, including the development of memoranda of understanding between Executive agencies designed to provide for consultation and the coordination of Federal efforts to further fair housing through the affirmative administration of programs and activities relating to housing and urban development.

1–402. In connection with carrying out functions under this Order the Secretary of Housing and Urban Development is authorized to request from any Executive agency such information and assistance deemed necessary. Each agency shall, to the extent permitted by law, furnish such information and assistance to the Secretary.

1–5. Administrative Enforcement.

1–501. Each Executive agency shall be responsible for enforcement of this Order and, to the extent permitted by law, shall cooperate and provide records, data and documentation in connection with any other agency's investigation of compliance with provisions of this Order.

1–502. If any Executive agency concludes that any person or entity (including any State or local public agency) applying for or participating in, or supervised or regulated under, a program or activity relating to housing and urban development has not complied with this Order or any applicable rule, regulation or procedure issued or adopted pursuant to this Order, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation and persuasion. An Executive agency need not pursue informal resolution of matters where similar efforts made by another Executive agency have been unsuccessful. In event of failure of such informal means, the Executive agency, in conformity with rules, regulations, procedures or policies issued or adopted by it pursuant to Section 1–3 hereof, shall impose such sanctions as may be authorized by law. To the extent authorized by law, such sanctions may include:

(a) cancellation or termination of agreements or contracts with such person, entity, or State or local public agency;

(b) refusal to extend any further aid under any program or activity administered by it and affected by this Order until it is satisfied that the affected person, entity, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this Order;

(c) refusal to grant supervisory or regulatory approval to such person, entity, or State or local public agency under any program or activity administered by it which is affected by this Order or revoke such approval if previously given;

(d) any other action as may be appropriate under its governing laws.

1–503. Findings of any violation under Section 1–502 shall be promptly reported to the Secretary of Housing and Urban Development. The Secretary of Housing and Urban Development shall forward this information to all other Executive agencies.

1–504. Any Executive agency shall also consider invoking appropriate sanctions against any person or entity where any other Executive department or agency has initiated action against that person or entity pursuant to Section 1–502 of this Order.

1–505. Each Executive agency shall seek the advice of the Secretary of Housing and Urban Development in this regard prior to a decision to initiate actions to invoke sanctions. Each such decision and the reasons therefor, shall be documented and shall be provided to the Secretary of Housing and Urban Development in a timely manner.

1–6. General Provisions.

1–601. Nothing in this Order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order No. 12250.

1–602. All provisions of regulations, guidelines and procedures proposed to be issued by Executive agencies pursuant to this Order which implement nondiscrimination requirements of laws covered by Executive Order No. 12250 shall be submitted to the Attorney General for review in accordance with that Executive Order. In addition, the Secretary will consult with the Attorney General regarding all regulations, guidelines and procedures proposed to be issued under Sections 1–301, 1–302 and 1–303 of this Order to assure consistency with coordinated Federal efforts to enforce nondiscrimination requirements in programs of Federal financial assistance pursuant to Executive Order No. 12250.

1–603. Nothing in this Order shall affect the authority and responsibility of the Attorney General to commence civil actions in cases involving a pattern or practice of discrimination or raising an issue of general public importance under the Federal Fair Housing Act.

1–604. (a) Part IV and Sections 501 and 503 of Executive Order No. 11063 are revoked. The activities and functions of the President's Commission on Equal Opportunity in Housing described in that Executive Order shall be performed by the Secretary of Housing and Urban Development.

(b) Sections 101 and 502(a) of Executive Order No. 11063 are revised to apply to discrimination because of "race, color, religion (creed), sex or national origin." All departments and agencies shall revise regulations, guidelines and procedures issued pursuant to Part II of Executive Order No. 11063 to reflect this amendment to coverage.

(c) Section 102 of Executive Order No. 11063 is revised by deleting the term "Housing and Home Finance Agency" and inserting in lieu thereof the term "Department of Housing and Urban Development."

1–605. Nothing in this Order shall affect any rquirement imposed under the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Home Mortgage Disclosure Act (12 U.S.C. 2901 *et seq.*) or the Community Reinvestment Act (12 U.S.C. 2810 *et seq.*).

1–7. Report.

1–701. The Secretary of Housing and Urban Development shall submit to the President an annual report commenting on the progress the Department of Housing and Urban Development and other Executive agencies have made in carrying out requirements and responsibilities under this Executive Order.

Jimmy Carter

THE WHITE HOUSE,
December 31, 1980.

HOUSING AND URBAN DEVELOPMENT ACT OF 1968

For Legislative History of Act, see p. 2873

PUBLIC LAW 90–448; 82 STAT. 476

[S. 3497]

An Act to assist in the provision of housing for low and moderate income families, and to extend and amend laws relating to housing and urban development.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the "Housing and Urban Development Act of 1968".

DECLARATION OF POLICY

Sec. 2. The Congress affirms the national goal, as set forth in section 2 of the Housing Act of 1949, of "a decent home and a suitable living environment for every American family".

The Congress finds that this goal has not been fully realized for many of the Nation's lower income families; that this is a matter of grave national concern; and that there exist in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal.

The Congress declares that in the administration of those housing programs authorized by this Act which are designed to assist families with incomes so low that they could not otherwise decently house themselves, and of other Government programs designed to assist in the provision of housing for such families, the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal has not become a reality; and in the carrying out of such programs there should be the fullest practicable utilization of the resources and capabilities of private enterprise and of individual self-help techniques.

JOBS IN HOUSING; EMPLOYMENT OPPORTUNITIES FOR LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS

Sec. 3. In the administration of the programs authorized by sections 235 and 236 of the National Housing Act, the below-market interest rate program under section 221(d) (3) of such Act, the low-rent public housing program under the United States Housing Act of 1937, and the rent supplement program under section 101 of the Housing and Urban Development Act of 1965, the Secretary of Housing and Urban Development shall—

(1) require, in consultation with the Secretary of Labor, that to the greatest extent feasible opportunities for training and employment arising in connection with the planning, construc-

tion, rehabilitation, and operation of housing assisted under such programs be given to lower income persons residing in the area of such housing; and

(2) require, in consultation with the Administrator of the Small Business Administration, that to the greatest extent feasible contracts for work to be performed pursuant to such programs shall, where appropriate, be awarded to business concerns, including but not limited to individuals or firms doing business in the fields of design, architecture, building construction, rehabilitation, maintenance, or repair, located in or owned in substantial part by persons residing in the area of such housing.

IMPROVED ARCHITECTURAL DESIGN IN GOVERNMENT HOUSING PROGRAMS

Sec. 4. The Congress finds that Federal aids to housing have not contributed fully to improvement in architectural standards. This objective has been contemplated in Federal housing legislation since the establishment of mortgage insurance through the Federal Housing Administration.

The Congress commends the Department of Housing and Urban Development for its recent efforts to improve architectural standards through competitive design awards and in other ways but at the same time recognizes that this important objective requires high priority if Federal aid is to make its full communitywide contribution toward improving our urban environment.

The Congress further finds that even within the necessary budget limitations on housing for low and moderate income families architectural design could be improved not only to make the housing more attractive, but to make it better suited to the needs of occupants.

The Congress declares that in the administration of housing programs which assist in the provision of housing for low and moderate income families, emphasis should be given to encouraging good design as an essential component of such housing and to developing housing which will be of such quality as to reflect its important relationship to the architectural standards of the neighborhood and community in which it is situated, consistent with prudent budgeting.

ANNUAL REPORT ON AREAS OF PROGRAM ADMINISTRATION AND MANAGEMENT WHICH REQUIRE IMPROVEMENT

Sec. 5. The Secretary shall, as early as practicable in the calendar year 1969 and in the calendar year 1970, make a report to the respective Committees on Banking and Currency of the House of Representatives and the Senate identifying specific areas of program administration and management which require improvement, describing actions taken and proposed for the purpose of making such improvements, and recommending such legislation as may be necessary to accomplish such improvements. Each such report shall include,

unit of general local government may become eligible under this title.

(e) The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

(f) The Secretary may issue obligations to the Secretary of the Treasury in an amount outstanding at any one time sufficient to enable the Secretary to carry out his obligations under guarantees authorized by this section. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Secretary issued under this section, and for such purposes is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which such securities may be issued under such Act are extended to include the purchases of the Secretary's obligations hereunder.

(g) Obligations guaranteed under this section may, at the option of the issuing unit of general local government or designated agency, be issued free from Federal taxation as provided in subsection (g). In the event that taxable obligations are issued and guaranteed, the Secretary is authorized to make, and to contract to make, grants to or on behalf of the issuing unit of general local government or public agency to cover not to exceed 30 per centum of the net interest cost (excluding such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing unit or agency of such obligations.

Section 3689 of the Revised Statutes, as amended (31 U.S.C. 711), is amended by adding at the end thereof a new paragraph as follows:

"(2) For payments required from time to time under contracts entered into pursuant to section 108 of the Housing and Community Development Act of 1974 for payment of interest costs on obligations guaranteed by the Secretary of Housing and Urban Development under that section."

(g) With respect to any obligation issued by a unit of general local government or designated agency which such unit or agency has elected to issue as a taxable obligation pursuant to subsection (e) of this section, the interest paid on such obligation shall be included in gross income for the purpose of chapter 1 of the Internal Revenue Code of 1954.

NONDISCRIMINATION

SEC. 109. (a) No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation

in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(b) Whenever the Secretary determines that a State or unit of general local government which is a recipient of assistance under this title has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of such State or the chief executive officer of such unit of local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the Governor or the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); (3) exercise the powers and functions provided for in section 111(a) of this Act; or (4) take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that a State government or unit of general local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

LABOR STANDARDS

Sec. 110. All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5): *Provided*, That this section shall apply to the rehabilitation of residential property only if such property is designed for residential use for eight or more families. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c)).

REMEDIES FOR NONCOMPLIANCE

Sec. 111. (a) If the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this title has failed to comply substantially with any provision of this title, the Secretary, until he is satisfied that there is no longer any such failure to comply, shall—

(1) terminate payments to the recipient under this title, or

(2) reduce payments to the recipient under this title by an amount equal to the amount of such payments which were not expended in accordance with this title, or

PART 1—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

1.1 Purpose.
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Appendix A.

§ 1.1 Purpose.

The purpose of this Part 1 is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.

§ 1.2 Definitions.

As used in this Part 1—

(a) The term "Department" means the Department of Housing and Urban Development.

(b) The term "Secretary" means the Secretary of Housing and Urban Development.

(c) The term "responsible Department official" means the Secretary or, to the extent of any delegation of authority by the Secretary to act under this Part 1, any other Department official to whom the Secretary may hereafter delegate such authority.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants, loans, and advances of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. The term "Federal financial assistance" does not include a contract of insurance or guaranty.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such program or activity (such as a redeveloper in the Urban Renewal Program), including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity.

(g) The term "applicant" means one who submits an application, contract, request, or plan requiring Department approval as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, contract, request, or plan.

§ 1.3 Application of Part 1.

This Part 1 applies to any program or activity for which Federal financial assistance is authorized under a law administered by the Department, including any program or activity assisted under the statutes listed in Appendix A of this Part 1. It applies to money paid, property transferred, or other Federal financial assistance extended to any such program or activity on or after January 3, 1965. This Part 1 does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended to any such program or activity before January 3, 1965, (c) any assistance to any person who is the ultimate beneficiary under any such program or activity, or (d) any employment practice, under any such program or activity, of any employer, employment agency, or labor organization, except to the extent described in § 1.4(c). The fact that certain financial assistance is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such financial assistance is not covered. Other financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

§ 1.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity to which this Part 1 applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program or activity to which this Part 1 applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(vi) Deny a person opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity (including the opportunity to participate in the program or activity as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) (i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color or national origin, or have the effect of defeating or substantially impairing accomplishment

of the objectives of the program or activity as respect to persons of a particular race, color, or national origin.

(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 et seq.), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this Part 1. The plan may allow an applicant to refuse a tendered vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official.

(iii) The responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of subdivision (ii) of this sub paragraph, this Part 1, and title VI of the Civil Rights Act of 1964, in order to effectuate and insure compliance with the requirements imposed thereunder.

(3) In determining the site or location of housing, accommodations, or facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this Part 1 applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this Part 1.

(4) As used in this Part 1 the housing, accommodations, facilities, services, financial aid, or other benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any housing, accommodations, facilities, services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section

(6) (i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this Part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program or activity to which this Part 1 applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program or activity (including recruitment or recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation and use of facilities). The requirements applicable to construction employment under such program or activity shall be those specified in or pursuant to Part III of Executive Order 11246 or any executive order which supersedes or amends it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this Part 1 tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this Part 1 applies, the provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to this Part 1 to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

§ 1.5 Assurances required.

(a) *General.* (1) Every contract for Federal financial assistance to carry out a program or activity to which this Part 1 applies, executed on or after January 3, 1965, and every application for such Federal financial assistance submitted on or after January 3, 1965, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such contract or application, contain or be accompanied by an assurance that the program or activity will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1. In the case of a contract or application where the Federal financial assistance is to provide is in the form of personal property, real property or interest therein or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. The responsible Department official shall specify the form of the foregoing assurance for such program or activity, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of Federal financial assistance the instrument effecting any disposition by the recipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case where Federal financial assistance is provided in the form of a transfer of real property or interests therein from the Federal Government, the instrument effecting or recording the transfer shall contain such a covenant.

(3) In program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this Part 1 shall extend to any facility located wholly or in part in such space.

(b) *Preexisting contracts—funds not disbursed.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and the funds have not been fully disbursed by the Department, the responsible Department official shall, where necessary to effectuate the purposes of this Part 1, require an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.

(c) *Preexisting contracts—periodic payments.* In any case where a contract for Federal financial assistance, to carry

out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and provides for periodic payments for the continuation of the program or activity, the recipient shall, in connection with the first application for such periodic payments on or after January 3, 1965, (1) submit a statement that the program or activity is being conducted in compliance with all requirements imposed by or pursuant to this Part 1 and (2) provide such methods of administration for the program or activity as are found by the responsible Department official to give reasonable assurance that the recipient will comply with all requirements imposed by or pursuant to this Part 1.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of persons as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such persons, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(e) *Elementary and secondary schools.* The requirements of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this Part 1 within the earliest practicable time, and provides reasonable assurance that it will carry out such plan.

§ 1.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official and each Department official who by law or delegation has the principal responsibility within the Department for the administration of any law extending financial assistance subject to this Part 1 shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Part 1 and shall provide assistance and guidance to recipients to help them comply voluntarily with this Part 1.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Part 1. In general, recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertainent to ascertain compliance with this Part 1. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Part 1 and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Departmnt official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Part 1.

§ 1.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this Part 1.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this Part 1 may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this Part 1. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this Part 1 occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this Part 1.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this Part 1, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Act or this Part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this Part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this Part 1, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this Part 1 may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1.5.* If an applicant fails or refuses to furnish an assurance required under § 1.5 or otherwise fails or refuses to comply with the requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the

procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to a contract therefor approved prior to January 3, 1965.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this Part 1, (3) the action has been approved by the Secretary, and (4) the expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient to comply with this Part 1 and to take such corrective action as may be appropriate.

§ 1.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph (a) or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with sections 3105 and 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 and in accordance with the Practice and Procedure for Hearings issues by the Department and published in Part 2 of this subtitle relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this Part 1, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the Department and the applicant or recipient, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this Part 1 with respect to two or more programs or activities to which this Part 1 applies, or noncompliance with this Part 1 and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this Part 1. Final decisions in such cases insofar as this Part 1 is concerned, shall be made in accordance with § 1.10.

§ 1.10 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient by certified or registered mail, return receipt requested. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within the period provided for in the rules of Practice and Procedure for Hearings issued by the Department (Part 2 of this subtitle), file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official, in which event a copy shall also be sent to the complainant.

(b) *Decisions on record or review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient, and to

the complainant, if any, by certified or registered mail, return receipt requested.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1.9(a) a decision a hearing examiner or responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(d) *Rulings required.* Each decision of a hearing examiner or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this Part 1 with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, to the program or activity involved and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this Part 1, including provisions designed to assure that no Federal financial assistance will thereafter be extended for such program or activity to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this Part 1, or to have otherwise failed to comply with this Part 1, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this Part 1.

(f) *Posttermination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this Part 1 and provides reasonable assurance that it will fully comply with this Part 1.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with the Practice and Procedure for Hearings issued by the Department (Part 2 of this subtitle). The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

§ 1.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against persons on the ground of race, color, or national origin under any program or activity to which this Part 1 applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant or recipient for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this Part 1, except that nothing in this Part 1 shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to January 3, 1965. Nothing in this Part 1, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Orders 11246 and 11375 and regulations issued thereunder, or

(2) Executive Order 11063 and regulations issued thereunder, or any other order, regulations or instructions, insofar as such order, regulations, or instructions, prohibit discrimination on the ground of race, color, or national origin in any program or activity or situation to which this Part 1 is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The responsible Department official shall assure that forms and detailed instructions and procedures for effectuating this Part 1 are issued and promptly made available to interested persons.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such department or agency, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this Part 1 (other than responsibility for final decision as provided in § 1.10), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this Part 1 to similar programs or activities and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible official of this Department.

APPENDIX A

FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO WHICH THIS PART 1 APPLIES

1. Advance Acquisition of Land. Sec. 704, Housing and Urban Development Act of 1965, 42 U.S.C. 3104.

2. Advice and Assistance with respect to Housing for Low and Moderate Income Families. Sec. 106, Housing and Urban Development Act of 1968, as amended by Sec. 903(a) Housing and Urban Development Act of 1970, 12 U.S.C. 1701x.

3. Alaska Housing Assistance. Sec. 1004, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3371.

4. College Housing Program. Title IV, Housing Act of 1950, 12 U.S.C. 1749.

5. Community Disposition Program. Atomic Energy Community Act of 1955, secs. 11–13, 21, 31–36, 41–43, 51–57, 61–66, 101–103, 111–119, 42 U.S.C. 2301; E.O. 11105, 28 F.R. 3909.

6. Comprehensive Planning Assistance and Comprehensive Planning Research and Demonstration Programs. Sec. 701, Housing Act of 1954, 40 U.S.C. 461.

7. Counselling Service to Mortgagors and Prospective Mortgagors. Sec. 237(e), National Housing Act, 12 U.S.C. 1715z–2.

8. Federal-State Training and City Planning and Urban Studies Fellowship Programs. Title VIII, Housing Act of 1964, 20 U.S.C. 801–807.

9. Grants for Housing Management Training. Sec. 803, Housing Act of 1964, 83 Stat. 393 (1969), 84 Stat. 1809 (1970), 20 U.S.C. 803.

10. Home Ownership for Lower Income Families. Sec. 235, National Housing Act, 12 U.S.C. 1715z.

11. Housing for Elderly or Handicapped. Sec. 202, Housing Act of 1959, 12 U.S.C. 1701q.

12. Loan and Grant Assistance for Planning Housing Projects in Appalachia, sec. 207, Appalachian Regional Development Act of 1965, as amended, 81 Stat. 257, 40 U.S.C. App. 207.

13. Low-Income Housing Demonstration Grant Program. Sec. 207, Housing Act of 1961, 42 U.S.C. 1436.

14. Low-Rent Public Housing Program (including housing in private accommodations). United States Housing Act of 1937, 42 U.S.C. 1401.

15. Model Cities Program. Title I, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301.

16. National Flood Insurance Program. Title XIII, Housing and Urban Development Act of 1968, 42 U.S.C. 4001.

17. Neighborhood Facilities Grants. Sec. 703, Housing and Urban Development Act of 1965, 42 U.S.C. 3103.

18. New Communities. Title IV, Housing and Urban Development Act of 1968, 42 U.S.C. 3901.

19. Loans and Grants for New Community Development Programs. Secs. 710 to 729, Housing and Urban Development Act of 1970, 42 U.S.C. 4511.

20. New Technologies in the Development of Housing for Lower Income Families. Sec. 108, Housing and Urban Development Act of 1968, 12 U.S.C. 1701z.

21. Open-Space Land Programs Title VII, Housing Act of 1961, 42 U.S.C. 1500. Note.

22. Public Facilities Liquidating Programs. See, generally, title II of Independent Offices Appropriation Act of 1955, Public Law 83–428, 12 U.S.C. 1701g–5.

23. Public Facility Loans Program. Title II, Housing Amendments of 1955, 42 U.S.C. 1491–1497 except 1492(a)(2) Assistance for Mass Transportation Facilities and Equipment (transferred to Secretary of Transportation by Reorganization Plan No. 2 of 1968, 33 F.R. 6965).

24. Public Works Acceleration Act Program. Public Works Acceleration Act, 42 U.S.C. 2641.

25. Public Works Planning Advances. Sec. 702, Housing Act of 1954, 40 U.S.C. 462.

26. Rehabilitation Loan Program. Sec. 312, Housing Act of 1964, 42 U.S.C. 1452b.

27. Rent Supplement Program. Sec. 101, Housing and Urban Development Act of 1965, 12 U.S.C. 1701s.

28. Rental and Cooperative Housing for Lower Income Families. Sec. 236, National Housing Act, 12 U.S.C. 1715z–1.

29. Research and Technology. Title V, Housing and Urban Development Act of 1970, 12 U.S.C. 1701z–1—1701z–4.

30. Sale of Surplus Federal Land for Housing, sec. 414, Housing and Urban Development Act of 1969, 40 U.S.C. 484b.

31. Special Assistance Functions. Sec. 306, National Housing Act. 12 U.S.C. 1720, including purchase of below market interest rate mortgages insured by FHA under sec. 221(d)(3). National Housing Act, 12 U.S.C. 1715l(d)(3).

32. Technical Assistance to Contractors or Subcontractors. Sec. 911(b), Housing and Urban Development Act of 1970, 15 U.S.C. 694(a). Note.

33. Urban Information and Technical Assistance Services. Title IX, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3351–3356.

34. Urban Mass Transportation Programs (Research, Development and Demonstration Projects; Grants for Technical Studies; Grants for Research and Training). Secs. 6(a), 9, and 11 of the "Urban Mass Transportation Act of 1964, as amended"; Reorganization Plan No. 2 of 1968, 33 FR 6965; 49 U.S.C. 1606(a), 1607(a), 1609(c).

35. Urban Renewal Demonstration Grant Program. Sec. 314, Housing Act of 1954, 42 U.S.C. 1452a.

36. Urban Renewal Program (Urban Renewal Projects and Neighborhood Development Programs, Code Enforcement Programs, Demolition Programs, Rehabilitation Grants, Interim Assistance Grants, and Community Renewal Programs). Title I, Housing Act of 1949, 42 U.S.C. 1450.

37. Urban Research and Technology. Title III, Housing Act of 1948, 12 U.S.C. 1701e, 1701f; sec. 602, Housing Act of 1956, 12 U.S.C. 1701d–3; and secs. 1010 and 1011, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3372 and 3373.

38. Water and Sewer Facilities Grants. Sec. 702, Housing and Urban Development Act of 1965, 42 U.S.C. 3102.

ARCHITECTURAL BARRIERS ACT OF 1968

PUBLIC BUILDINGS—HANDICAPPED PERSONS

For Legislative History of Act, see p. 3214

PUBLIC LAW 90-480; 82 STAT. 718

[S. 222]

An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

As used in this Act, the term "building" means any building or facility (other than (A) a privately owned residential structure and (B) any building or facility on a military installation designed and constructed primarily for use by able bodied military personnel) the intended use for which either will require that such building or facility be accessible to the public, or may result in the employment or residence therein of physically handicapped persons, which building or facility is—

(1) to be constructed or altered by or on behalf of the United States;

(2) to be leased in whole or in part by the United States after the date of enactment of this Act after construction or alteration in accordance with plans and specifications of the United States; or

(3) to be financed in whole or in part by a grant or a loan made by the United States after the date of enactment of this Act if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan.

Sec. 2. The Administrator of General Services, in consultation with the Secretary of Health, Education, and Welfare, is authorized to prescribe such standards for the design, construction, and alteration of buildings (other than residential structures subject to this Act and buildings, structures, and facilities of the Department of Defense subject to this Act) as may be necessary to insure that physically handicapped persons will have ready access to, and use of, such buildings.

Sec. 3. The Secretary of Housing and Urban Development, in consultation with the Secretary of Health, Education, and Welfare, is authorized to prescribe such standards for the design, construction, and alteration of buildings which are residential structures subject to this Act as may be necessary to insure that physically handicapped persons will have ready access to, and use of, such buildings.

Sec. 4. The Secretary of Defense, in consultation with the Secretary of Health, Education, and Welfare, is authorized to prescribe such standards for the design, construction, and alteration of buildings, structures, and facilities of the Department of Defense subject to this Act as may be necessary to insure that physically handicapped persons will have ready access to, and use of, such buildings.

Sec. 5. Every building designed, constructed, or altered after the effective date of a standard issued under this Act which is applicable to such building, shall be designed, constructed, or altered in accordance with such standard.

Sec. 6. The Administrator of General Services, with respect to standards issued under section 2 of this Act and the Secretary of Housing and Urban Development, with respect to standards issued under section 3 of this Act, and the Secretary of Defense with respect to standards issued under section 4 of this Act, is authorized—

(1) to modify or waive any such standard, on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned, and upon a determination by the Administrator or Secretary, as the case may be, that such modification or waiver is clearly necessary, and

(2) to conduct such surveys and investigations as he deems necessary to insure compliance with such standards.

Approved August 12, 1968

(a) The staff capability of the requesting agency to negotiate and administer contracts for the various types of work involved, and

(b) Whether such a delegation will promote efficiency and economy. See § 101-19.402(c) regarding contracts for professional engineering and architectural services.

§ 101-19.502 Exercise of delegation.

Delegated work shall be performed according to standards established by the Administrator of General Services. No such delegation of authority shall exempt the person to whom it is made, or the exercise of such authority, from any provision of the Public Buildings Act of 1959, as amended (40 U.S.C. 601–615).

Subpart 101-19.6—Accommodations for the Physically Handicapped

§ 101-19.600 Scope.

This subpart prescribes standards for the design, construction, and alteration of buildings to ensure that physically handicapped persons will have ready access to and use of such buildings and necessary requirements related thereto.

§ 101-19.601 Authority and applicability.

This subpart implements Public Law 90-480, approved August 12, 1968, as amended by Public Law 91-205, approved March 5, 1970. The standards prescribed apply to all Federal agencies and instrumentalities and to non-Federal organizations to the extent provided in the Act.

§ 101-19.602 Definitions.

The following definitions shall apply to this Subpart 101-19.6.

(a) "Building" means any building or facility (other than residential structures; buildings, structures, and facilities of the Department of Defense; and any other building or facility on a military reservation designed and constructed primarily for use by able-bodied military personnel) the intended use for which will require either that such building or facility be accessible to the public or may result in the employment therein of physically handicapped persons, which is to be:

(1) Constructed or altered by or on behalf of the United States;

(2) Leased in whole or in part by the United States after August 12, 1968, if constructed or altered in accordance with plans and specifications of the United States;

(3) Financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if the building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan; or

(4) Constructed under authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or title III of the Washington Metropolitan Area Transit Regulation Compact.

(b) "Alteration" means repairing, improving, remodeling, extending, or otherwise changing a building.

§ 101-19.603 Standards.

Except as otherwise provided in § 101-19.604, every building designed, constructed, or altered after September 2, 1969, shall be designed, constructed, or altered in accordance with the minimum standards in the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped, Number A117.1—R 1971" approved by the American Standards Association, Inc. (subsequently changed to American National Standards Institute, Inc.).

§ 101-19.604 Exceptions.

The standards established in § 101-19.603 shall not apply to:

(a) The design, construction, or alteration of any portion of a building which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(b) The alteration of an existing building if the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installation or improvements to accommodate the physically handicapped;

(c) The alteration of an existing building, or of such portions thereof, to which application of the standards is not structurally possible; and

(d) The construction or alteration of a building for which plans and specifications were completed or substantially completed on or before September 2, 1969.

68-015 O—76——11

CHAPTER 51—DESIGN AND CONSTRUCTION OF PUBLIC BUILDINGS TO ACCOMMODATE PHYSICALLY HANDICAPPED

Sec.
4151. Definitions.
4152. Standards for design, construction, and alteration of buildings; Secretary of Health, Education, and Welfare.
4153. Standards for design, construction, and alteration of buildings; Secretary of Housing and Urban Development.
4154. Standards for design, construction, and alteration of buildings; Secretary of Defense.
4154a. Standards for design, construction and alteration of buildings; United States Postal Service.
4155. Effective date of standards.
4156. Waiver and modification of standards.
4157. Reports to Congress and congressional committees.

§ 4151. Definitions

As used in this chapter, the term "building" means any building or facility (other than (A) a privately owned residential structure not leased by the Government for subsidized housing programs and (B) any building or facility on a military installation designed and constructed primarily for use by able bodied military personnel) the intended use for which either will require that such building or facility is accessible to the public, or may result in the employment or residence therein of physically handicapped persons, which building or facility is—

(1) to be constructed or altered by or on behalf of the United States;

(2) to be leased in whole or in part by the United States after August 12, 1968,;[1]

(3) to be financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan; or

(4) to be constructed under authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or title III of the Washington Metropolitan Area Transit Regulation Compact.

Pub.L. 90–480, § 1, Aug. 12, 1968, 82 Stat. 718; Pub.L. 91–205, Mar. 7, 1970, 84 Stat. 49; Pub.L. 94–541, Title II, § 201(1), Oct. 18, 1976, 90 Stat. 2507.

[1] So in original.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
1405 Curtis Street
Denver, Colorado 80202

REGION VII

EXECUTIVE ORDERS 11246 & 11375

Executive Orders 11246 and 11375

Equal Opportunity in Employment

Executive Order 11246 was issued on September 24, 1965, superseding Executive Orders 10590, 10722, 10925, 11114, and 11162 and abolishing the President's Committee on Equal Employment Opportunity. Part I of this Order prohibits discrimination in Government employment because of race, creed, color, or national origin. It directs each executive department and agency to establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment. It authorizes the Civil Service Commission to supervise and provide leadership and guidance for the programs. The Secretary of Labor is responsible for the administration of Parts II and III of the Order and for issuing rules and regulations relating respectively to "Nondiscrimination in Employment by Government Contractors and Subcontractors" and "Nondiscrimination Provisions in Federally Assisted Construction Contracts." On October 13, 1967, Executive Order 11375 amended Executive Order 11246 to add the prohibition of discrimination because of sex.

[30 F.R. 12319-20]

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

SEC. 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to provide the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SEC. 102. The head of each executive department and agency shall establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 101.

SEC. 103. The Civil Service Commission shall supervise and provide leadership and guidance in the conduct of equal employment opportunity programs for the civilian employees of and applications for employment within the executive departments and agencies and shall review agency program accomplishments periodically. In order to facilitate the achievement of a model program for equal employment opportunity in the Federal service, the Commission may consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Part.

SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

Note: Part I amended by E. O. 11478, Aug. 12, 1969

SEC. 105. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

PART II—NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

SUBPART A—DUTIES OF THE SECRETARY OF LABOR

SEC. 201. The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

SUBPART B—CONTRACTORS' AGREEMENTS

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in

conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided,* That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct

that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

Sec. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order; *And provided further*, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

SUBPART C—POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

Sec. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause

to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

SUBPART D—SANCTIONS AND PENALTIES

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the nondiscrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of

existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under Subsection (a)(2) of this Section, or before a contract shall be canceled or terminated in whole or in part under Subsection (a)(5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

SEC. 210. Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209(a)(6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

SUBPART E—CERTIFICATES OF MERIT

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency, from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III—NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance,

or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 203 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303. (a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing

before the administering department or agency.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

PART IV—MISCELLANEOUS

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. (a) Executive Orders No. 10308 (January 10, 1955), 10728 (August 6, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11130 (July 20, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

LYNDON B. JOHNSON.

THE WHITE HOUSE,
September 24, 1965

☆ GPO 677-103/VIII-18

Vocational Rehabilitation Act of 1973

Following is the text of the Vocational Rehabilitation Act of 1973, sections 7, 501-504, 611-617, and 621-623 of P.L. 93-112, 87 Stat. 390, approved by Congress September 26, 1973, and last amended by P.L. 95-602, 92 Stat. 2955, effective November 6, 1978. The act prohibits discrimination against handicapped persons by federal contractors, and requires that federal contractors take affirmative action to employ handicapped persons.

Sec. 7. For purposes of this Act:

(6)(A) Except as otherwise provided in subparagraph (B), the term "handicapped individual" means any individual who (i) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (ii) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to titles I and III of this Act.

(B) Subject to the second sentence of this subparagraph, the term "handicapped individual" means, for purposes of titles IV and V of this Act, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. For purposes of sections 503 and 504 as such sections relate to employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. (29 U.S.C. § 706) [As last amended by P.L. 95-602, effective November 6, 1978.]

EMPLOYMENT OF HANDICAPPED INDIVIDUALS

Sec. 501. (a) There is established within the Federal Government an Interagency Committee on Handicapped Employees (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher); the Chairman of the Civil Service Commission, the Administrator of Veterans' Affiars, and the Secretaries of Labor and Health, Education, and Welfare. The Secretary of Health, Education, and Welfare and the Chairman of the Civil Service Commission shall serve as co-chairmen of the Committee. The resources of the President's Committees on Employment of the Handicapped and on Mental Retardation shall be made fully available to the Committee. It shall be the purpose and function of the Committee (1) to provide a focus for Federal and other employment of handicapped individuals, and to review, on a periodic basis, in cooperation with the Civil Service Commission, the adequacy of hiring, placement, and advancement practices with respect to handicapped individuals, by each department, agency, and instrumentality in the executive branch of Government, and to insure that the special needs of such individuals are being met; and (2) to consult with the Civil Service Commission to assist the Commission to carry out its responsibilities under subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the Civil Service Commission such recommendations for legislative and administrative changes, as it deems necessary or desirable. The Civil Service Commission shall timely transmit the appropriate committees of Congress any such recommendations.

(b) Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after the date of enactment of this Act, submit to the Civil Service Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of handicapped individuals in such department, agency or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special need of handicapped employees are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission, if the Commission determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for handicapped individuals.

(c) The Civil Service Commission, after consultation with the Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for handicapped individuals, including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies and procedures.

(d) The Civil Service Commission, after consultation with the Committee, shall on June 30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of handicapped individuals by each department, agency, and instrumentality and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the Civil Service Commission under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the Civil Service Commission's activities under subsections (b) and (c) of this section.

(e) An individual who, as a part of his individualized written rehabilitation program under a State plan approved under this Act, participates in a program of unpaid work experience in a Federal agency, shall not, by reason thereof, be considered to be a Federal employee or to be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(f)(1) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized and directed to cooperate with the President's Committee on Employment of the Handicapped in carrying out its functions.

(2) In selecting personnel to fill all positions on the President's Committee on Employment of the Handicapped, special consideration shall be given to qualified handicapped individuals. (29 U.S.C. §791)

Sec. 502. [illegible]

(a) Any contract in excess of $2,500 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to

carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in section 7(7). The provisions of this section shall apply to any subcontract in excess of $2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after the date of enactment of this section. [As last amended by P.L. 95-602, effective November 6, 1978.]

(b) If any handicapped individual believes any contractor has failed or refuses to comply with the provisions of his contract with the United States, relating to employment of handicapped individuals, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) The requirements of this section may be waived, in whole in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which he shall prescribe, when he determines that special circumstances in the national interest so require and states in writing his reasons for such determination. (29 U.S.C. §793)

NONDISCRIMINATION UNDER FEDERAL GRANTS AND PROGRAMS

Sec. 504. No otherwise qualified handicapped individual in the United States, as defined in section 7(7), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committes of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees. (29 U.S.C. §794) [As last amended by P.L. 95-602, effective November 6, 1978.]

REMEDIES AND ATTORNEYS' FEES

Sec. 505. (A)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C.2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5 (f) through (k), shall be available, with respect to any complaint under section 501 of this Act, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any neccessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 504 of this Act.

(b) In any action or proceeding to enforce or charge a violation of a provi-

sion of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. (29 U.S.C §794a) [Added by P.L. 95-602, effective November 6, 1978.]

TITLE VI—EMPLOYMENT OPPORTUNITIES FOR HANDICAPPED INDIVIDUALS

Sec 601 Short title

Part A — Community Service Employment Programs for Handicapped Individuals

Sec 611 Establishment of program
Sec 612 Administration
Sec 613 Participants not Federal employees
Sec 614 Interagency cooperation
Sec 615 Equitable distribution of assistance
Sec 616 Definitions
Sec 617 Authorization of appropriations

Part B — Projects With Industry and Business Opportunities for Handicapped Individuals

Sec 621 Projects with industry
Sec 622 Business opportunities for handicapped individuals
Sec. 623 Authorization of appropriations

SHORT TITLE

Sec. 601. This title may be cited as the 'Employment Opportunities for Handicapped Individuals Act'.

Part A — Community Service Employment Pilot Programs for Handicapped Individuals

ESTABLISHMENT OF PILOT PROGRAM

Sec. 611. (a) In order to promote useful opportunities in community service activities for handicapped individuals who have poor employment prospects, the Secretary of Labor (hereinafter in this part referred to as the 'Secretary') is authorized to establish a community service employment pilot program for handicapped individuals. For purposes of this part, the term 'eligible individuals' means persons who are handicapped individuals (as defined in section 7(7) of this Act) and who are referred to programs under this part by designated State units.

(b)(1) The Secretary may enter into agreements with public or private nonprofit agencies or organizations, including national organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations in order to carry out the pilot program referred to in subsection (a). Such agreements may include provisions consistent with subsection (c) for the payment of the costs of projects developed by such organizations and agencies in cooperation with the Secretary. No payment shall be made by the Secretary toward the cost of any such project unless the Secretary determines that:

(A) Such project will provide employment only for eligible individuals, except that if eligible individuals are not available to serve as technical, administrative, or supervisory personnel for a project then such personnel may be recruited from among other individuals.

(B) Such project will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities.

(C) Such project will employ eligible individuals in services related to publicly owned and operated facilities and projects, or projects sponsored by organizations, other than political parties, exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, except for projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship.

(D) Such project will contribute to the general welfare of the community in which eligible individuals are employed under such project.

(E) Such project (i) will result in an increase in employment opportunities over those opportunities which would otherwise be available, (ii) will not result in any displacement of currently employed workers (including partial displacement, such as a reduction in the

Section V

Housing Requirements

of the lease and the Contract. Subject to the foregoing and § 882.106(b) (the rent reasonableness limitations) adjustments to Contract Rents shall be as follows:

(1) *Annual Adjustments.* (i) Notwithstanding any Contract provisions to the contrary, annual adjustments as of any anniversary date shall be determined as follows:

(A) For a Contract entered into on or after January 29, 1979, the applicable Section 8 Annual Adjustment Factor (24 CFR Part 888) most recently published by HUD in the FEDERAL REGISTER;

(B) For a Contract entered into before January 29, 1979, the greater of the percent change in the applicable published Existing Housing Fair Market Rent (with appropriate reduction in the adjustment where utilities are paid directly by the Family); or the applicable Annual Adjustment Factor:

(ii) Adjustments under paragraph (a)(1) of this section shall only be approved if the owner has the legal right to terminate the tenancy on the anniversary date. Contract Rents may be adjusted upward or downward, as may be appropriate. However, in no case shall the adjusted rent be less than the Contract Rent on the effective date of the Contract.

(b) *Overall Limitation.* Notwithstanding any other provisions of this part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in § 882.106(b)) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2) of this section).

[43 FR 61246, Dec. 29, 1978, as amended at 44 FR 43903, July 26, 1979; 47 FR 4252, Jan. 29, 1982]

§ 882.109 Housing quality standards.

Housing used in this program shall meet the Performance Requirements set forth in this section. In addition, the housing shall meet the Acceptability Criteria set forth in this section except for such variations as are proposed by the PHA and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(a) *Sanitary Facilities*—(1) *Performance Requirement.* The dwelling unit shall include its own sanitary facilities which are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(2) *Acceptability Criteria.* A flush toilet in a separate, private room, a fixed basin with hot and cold running water, and a shower or tub with hot and cold running water shall be present in the dwelling unit, all in proper operating condition. These facilities shall utilize an approved public or private disposal system.

(b) *Food Preparation and Refuse Disposal*—(1) *Performance Requirement.* The dwelling unit shall contain suitable space and equipment to store, prepare, and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(2) *Acceptability Criteria.* The unit shall contain the following equipment in proper operating condition: cooking stove or range and a refrigerator of appropriate size for the unit, supplied by either the Owner or the Family, and a kitchen sink with hot and cold running water. The sink shall drain into an approved public or private system. Adequate space for the storage, preparation and serving of food shall be provided.

(c) *Space and Security*—(1) *Performance Requirement.* The dwelling unit shall afford the Family adequate space and security.

(2) *Acceptability Criteria.* A living room, kitchen area, and bathroom shall be present; and the dwelling unit shall contain at least one sleeping or living/sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside the unit shall be lockable.

(d) *Thermal Environment*—(1) *Performance Requirement.* The dwelling unit shall have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability Criteria.* The dwelling unit shall contain safe heating and/or cooling facilities which are in proper operating condition and can provide adequate heat and/or cooling to each room in the dwelling unit appropriate for the climate to assure a healthy living environment. Unvented room heaters which burn gas, oil or kerosene are unacceptable.

(e) *Illumination and Electricity.* (1) *Performance Requirement.* Each room shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(2) *Acceptability Criteria.* Living and sleeping rooms shall include at least one window. A ceiling or wall type light fixture shall be present and working in the bathroom and kitchen area. At least two electric outlets one of which may be an overhead light, shall be present and operable in the living area, kitchen area, and each bedroom area.

(f) *Structure and Materials.* (1) *Performance Requirement.* The dwelling unit shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(2) *Acceptability Criteria.* Ceilings, walls, and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be maintained in safe and operating condition.

(g) *Interior Air Quality.* (1) *Performance Requirement.* The dwelling unit shall be free of pollutants in the air at levels which threaten the health of the occupants.

(2) *Acceptability Criteria.* The dwelling unit shall be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful air pollutants. Air circulation shall be adequate throughout the unit. Bathroom areas shall have at least one openable window or other adequate exhaust ventilation.

(h) *Water Supply.* (1) *Performance Requirement.* The water supply shall be free from contamination.

(2) *Acceptability Criteria.* The unit shall be served by an approved public or private sanitary water supply.

(i) *Lead Based Paint.* (1) *Performance Requirement.* (i) The dwelling unit shall be in compliance with HUD Lead Based Paint regulations, 24 CFR, Part 35, issued pursuant to the Lead Based Paint Poisoning Prevention Act, 42 USC 4801, and the Owner will provide certification that the dwelling is in compliance with such HUD Regulations.

(ii) If the property was constructed prior to 1950, the Family upon occupancy shall have been furnished the notice required by HUD Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning.

(2) *Acceptability Criteria.* Same as Performance Requirement.

(j) *Access.* (1) *Performance Requirement.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties, and the building shall provide an alternate means of egress in case of fire.

(2) *Acceptability Criteria.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire (such as fire stairs or egress through windows).

(k) *Site and Neighborhood.* (1) *Performance Requirement.* The site and neighborhood shall be reasonably free from disturbing noises and reverbera-

tions and other hazards to the health, safety, and general welfare of the occupants.

(2) *Acceptability Criteria.* The site and neighborhood shall not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(l) *Sanitary Condition*—(1) *Performance Requirement.* The unit and its equipment shall be in sanitary condition.

(2) *Acceptability Criteria.* The units and its equipment shall be free of vermin and rodent infestation.

(m) *Congregate Housing—Performance Requirement.* The foregoing standards shall apply except for paragraph (b) of this section and the requirement in paragraph (e)(2) of this section for a kitchen area. In addition, the following standards shall apply:

(1) The unit shall contain a refrigerator of appropriate size.

(2) The sanitary facilities described in § 882.109(a) shall be contained within the unit.

(3) The central dining facility and central kitchen shall be located within the building or housing complex and be accessible to the occupants of the congregate units, and shall contain suitable space and equipment to store, prepare and serve food in a sanitary manner by a food service or persons other than the occupants and shall be for the primary use of occupants of the congregate units and be sufficient in size to accommodate the occupants. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(n) *Independent Group Residence—Performance Requirement.* The foregoing standards shall apply except for paragraphs (a), (b), (c), (f), (k), and (m) of this section. In addition, the following standards shall apply: (1) The unit shall contain and have ready access to a flush toilet which can be used in privacy, a fixed basin with hot and cold running water, and a shower and/or tub equipped with hot and cold running water all in proper operating condition and adequate for personal cleanliness and the disposal of human wastes. These facilities shall utilize an approved public or private disposal system, and shall be sufficient in number so that they need not be shared by more than four occupants. Those units accommodating physically handicapped occupants with wheelchairs or other special equipment shall provide access to all sanitary facilities, and shall provide, as appropriate to needs of the occupants, basins and toilets of appropriate height; grab bars to toilets, showers and/or bathtubs; shower seats; and adequate space for movement.

(2) The unit shall contain suitable space to store, prepare and serve foods in a sanitary manner. A cooking stove or range, a refrigerator(s) of appropriate size and in sufficient quantity for the number of occupants, and a kitchen sink with hot and cold running water shall be present in proper operating condition. The sink shall drain into an approved private or public system. Adequate space for the storage, preparation and serving of food shall be provided. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(3) The dwelling unit shall afford the Family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social and/or recreational community space shall be within the unit and the dwelling unit shall contain at least one sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit shall be capable of being locked. An emergency exit plan shall be developed and occupants shall be apprised of the details of the plan. Regular fire inspections shall be conducted by appropriate local officials. Readily accessible first aid supplies and fire extinguishers shall be provided throughout the unit, smoke detectors shall be provided and emergency phone numbers

(police, ambulance, fire department, etc.) shall be available at every phone and individual copies shall be provided to each occupant. All emergency and safety features and procedures shall meet applicable State and local standards.

(4) The unit shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment. Ceilings, walls and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be maintained in safe and operating condition. Units accommodating physically handicapped occupants with wheelchairs and other special equipment shall not contain architectural barriers which impede access or use, and handrails and ramps shall be provided as appropriate.

(5) The site and neighborhood shall be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants, and shall not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibrations or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards. The unit shall be located in a residential setting and be similar in size and appearance to housing generally found in the neighborhood, and be within walking distance or accessible via public or available private transportation to medical and other appropriate commercial and community service facilities.

(6) *Supportive Services.* (i) A planned program of adequate supportive services appropriate to the needs of the occupants shall be provided on a continual basis by a qualified Resident Assistant(s) residing in the unit, or other qualified person(s) not residing in the unit, who will provide such services on a continual, planned basis. Supportive services which are provided within the unit may include the following types of services: counseling; social services which promote physical activity, intellectual stimulation and/or social motivation; training or assistance with activities of daily living including housekeeping, dressing, personal hygiene and/or grooming; provision of basic first aid skills in case of emergencies; supervision of self-administration of medications, diet and nutrition; and assurance that occupants obtain incidental medical care, as needed, by facilitating the making of appointments at, and transportation to, medical facilities. Supportive services provided within the unit shall not include the provision of continual nursing, medical or psychiatric care.

(ii) The provision and quality of the planned program of supportive services, including the minimal qualifications, quantity and working hours of the Resident Assistant(s) living in the unit or other person(s) providing continual supportive services, shall be initially determined by the Service Agency in accordance with the standards established by the State. Compliance with these standards by the Service Agency shall be regularly monitored throughout the term of the Contract by the PHA and the State (e.g., Department of Human Resources, Mental Health, Mental Retardation, Social Services, etc.), or a local authority (other than the Service Agency providing services) designated by the State to establish, maintain and enforce such standards.

(iii) A written Service Agreement(s), approved by the State and in effect between the Owner and the Service Agency and/or the entities which provide the necessary supportive service, shall be submitted to the PHA with the request for Lease Approval. The

Lease between the eligible individual and the Owner shall set forth the Owner's obligation for and means of providing these services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease and shall be approved by the State. (See § 882.210(f)(2).)

(7) *State Approval.* Independent Group Residences shall be licensed, certified or otherwise approved in writing by the State (e.g., Departments of Human Resources, Mental Health, Retardation, Social Services, etc.) prior to the execution of the initial Contract. This approval shall be reexamined periodically based on a schedule established by the State.

To insure that facilities and the supportive services are appropriate to the needs of the occupants, the State shall also approve the written Service Agreement(s) (or Lease, if the provider of services is the lessor) for each Independent Group Residence. (See § 882.210(f)(2).)

(o) *Mobile Home*—(1) *Performance Requirement.* A Mobile Home unit, whether owner or renter occupied, shall comply with the foregoing standards except for paragraph (m) of this section, Congregate Housing, and paragraph (n) of this section, Independent Group Residences. In addition, a Mobile Home unit shall:

(*a*) Meet the definition of a Mobile Home set forth in § 882.102,

(*b*) Be equipped with at least one smoke detector in working condition, and

(*c*) Must be placed on the site in a stable manner and be free from hazards such as sliding or wind damage.

(2) *Acceptability Criteria.* A Mobile Home must be securely anchored by a tie-down device which distributes and transforms the loads imposed by the unit to appropriate ground anchors to resist wind overturning and sliding.

[43 FR 61246, Dec. 29, 1978, as amended at 44 FR 21630, Apr. 11, 1979; 44 FR 65364, Nov. 9, 1979]

§ 882.110 Types of housing.

(a) Any type of Existing Housing meeting the housing quality standards may be utilized under this part, except nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, and facilities providing continual psychiatric, medical or nursing services. Examples of Existing Housing which may be utilized include, but are not limited to, privately owned apartments, houses and congregate housing units; existing FHA insured, Section 202 direct loan, Farmers Home Administration (FmHA) insured or direct loan, or VA guaranteed properties; properties held by the Secretary, or properties sold by the Secretary on which the Secretary has taken back a purchase money mortgage. Eligible types of Independent Group Residences include, but are not limited to, self-contained apartments and houses: *Provided*, They meet the requirements of § 882.109(n).

(b) Congregate housing may be utilized for eligible elderly, handicapped, disabled or displaced families or individuals. Independent Group Residences shall be utilized for eligible elderly, handicapped or disabled Families or individuals which require a planned program of continual supportive services.

(c) In any Section 221(d)(3) below market interest rate (BMIR) or market interest rate (MIR), Section 202, Section 236 (insured or non-insured), FmHA Section 515 interest credit project:

(1) Units receiving assistance under the Section 23 or rent supplement programs may continue to receive such assistance or, upon conversion of the Section 23 units to Section 8, the occupants may receive assistance under Section 8, and (2) the occupants of units not receiving such assistance may receive Section 8 assistance, provided that the total number of units in the project covered by Housing Assistance Payments Contracts under Section 8 or receiving Section 23 rental assistance, rent supplement assistance, Section 236 "deep subsidy" rental assistance payments, or State or local subsidy (other than property tax exemption or abatement) does not exceed 40 percent of the total number of units in the project. Upon request, this limitation may be exceeded for

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMMUNITY PLANNING AND DEVELOPMENT

NOTICE CPD 79-27

September, 1979

Expires: March, 1980

TO: All Regional Administrators, Directors of Regional CPD, Area Office Directors, and CPD Division Directors

SUBJECT: Use of Escrow Accounts for Property Rehabilitation Loans or Grants in Block Grant Program

The purpose of this Notice is to clarify policy regarding the use of escrow accounts in connection with rehabilitation loans or grants made to a property owner by block grant recipients under the Community Development Block Grant program.

Escrow accounts typically are used in the following fashion. When a rehabilitation grant or loan is made by a block grant recipient, block grant funds are drawn down and deposited into an escrow account. As costs are incurred and work is satisfactorily completed the rehabilitation contractor is paid from funds in the escrow account.

There is apparently some confusion as to the permissibility of this procedure under U.S. Department of the Treasury requirements on cash withdrawals which are made applicable to the Block Grant Program under 24 CFR 570.503. Under these requirements drawdowns must be timed to be in accord with the actual cash requirements of the recipient in carrying out the purpose of the approved program or project. More specifically, the timing of the drawdowns shall be as close as is administratively feasible to actual disbursement by the recipient for program costs.

In considering this issue, it must first be emphasized that the eligible program activity for which block grant assistance is provided is the provision of a loan or grant by the recipient to a property owner for the rehabilitation of his private property. Thus, compliance with letter of credit requirements is not to be judged in terms of when the property owner incurs costs under his rehabilitation contract, but when the block grant recipient incurs a program cost for the eligible activity. In this regard, a program cost is incurred at the point a loan or grant is provided, whether the proceeds are received by the property owner or deposited into an escrow account. Therefore, the relevant criterion of compliance is whether a legitimate purpose is served by disbursing the funds prior to costs being

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incurred by the property owner.

The underlying purpose for most escrow accounts is to permit the utilization of small contractors in the recipient's rehabilitation program. The escrow account procedure is needed principally for two reasons. It provides for faster payment than is often possible under a recipient's normal payment procedure. It also provides certain knowledge that funds are readily available for payment. These features are important to small contractors who may not possess sufficient financial resources to carry receivables for the period covering the normal cycle, and who are either unable to obtain working capital financing or can obtain financing only at prohibitive rates. In such cases, utilizing an escrow account procedure serves a legitimate program purpose and is thus consonant with letter of credit requirements.

If a recipient has determined that the escrow account procedure is needed to procure the services of small contractors, it may be utilized subject to the requirements set forth below. If the escrow account procedure is intended to serve some other purpose, prior authorization shall be obtained from the Area Office.

A proposed rule is being prepared for publication and comment in the Federal Register which will prescribe requirements governing the use of escrow accounts in a rehabilitation context. These requirements are deemed necessary to assure that grant funds are adequately safeguarded and that they are used solely for authorized purposes. Until this rule is effective, any escrow arrangement made after the date of this notice shall provide, at a minimum, that:

(1) The escrow account shall not be established (the drawdown and transfer of grant funds) until a contractor is selected to do the rehabilitation work;

(2) The escrow account shall be established in the lesser amount of the contract price of the work or the maximum loan/grant which the recipient will provide;

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(3) The rehabilitation work shall be completed and accepted and contract payments made within 180 days from the day the escrow account was established (an extension of this period may be approved by the Area Office for sufficient reasons); and

(4) If the escrow account is interest bearing, interest income shall either be applied to payment of the contractor or trturned to the recipient as program income. If funds remain after all work has been completed, they shall be returned to the recipient.

Recipients undertaking rehabilitation activities should be notified of these requirements as soon as it is practicable to do so.

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